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No. 89-1799

In The

Supreme Court of the United States

October Term, 1989

JEFFREY M. MASSON,

Petitioner,

vs.

THE NEW YORKER MAGAZINE, INC., ALFRED A. KNOPF, INC., and JANET MALCOLM,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Docket Entries – Northern District of California
Case No. C847548 EFL

1984		
Nov 29	1	COMPLAINT: SUMMONS ISSUED.
1985		
Feb 1	9	Plaintiff's IST AMENDED COMPLAINT, No Process.
Feb 11	11	–Notice of Motion to Dismiss Ist Amended Complaint or for more definite statement.
	12	–Memo in support of motion to dismiss Ist amended Complaint.
Mar 1	15	Plaintiff's Memo of Points & Authorities in opposition to motion to dismiss Ist amended complaint/or for more definite statement. 3-15-85 at 10 a.m.
Mar 8	17	Defendant's reply Memo in support of motion to dismiss or for more definite statement.
Mar 22	18	MINUTES: (C/R Lavon Granger) defendant's Motion to dismiss Ist amended Complaint or for more definite statement, Granted with 30 days leave to amend.
Apr 22	20	Plaintiff's *2nd AMENDED COMPLAINT,* Jury Demand. No Process.
May 2	21	Defendant's Memo in support of Motion to dismiss 2nd amended complaint 6-7-85 at 10 a.m.
May 2	22	–Notice of Motion to dismiss 2nd amended complaint 6-7-85 10 a.m.

May 24	23	Plaintiff's Memo of Points & Authorities in opposition to motion to dismiss 2nd amended complaint or for more definite statement.
May 28	24	–Memo of Points & Authorities in opposition to motion to dismiss 2nd amended complaint or for more definite statement. 6-7-85 at 10 a.m.
May 31	25	Defendants' Reply Memo in Support of Motion to dismiss Second Amended Complaint
Jun 3	26	–Reply Memo in support of #22.
Jun 7	27	ORDER RE DEFAMATORY ALLEGATION (d): EFL
	28	MINUTES: (c/R Ray Linkerman) Defendant's Motion to dismiss 2nd amended complaint. Order: Plaintiff may amend complaint within 30 days following service of court's order re summary judgment motion.
Jun 12	30	ORDER: Defendant's Motion to dismiss 2nd amended complaint, denied. EFL
Jul 12	35	Plaintiff's *3RD AMENDED COMPLAINT*, Jury Trial Demanded.
Aug 5	36	Defendants Janet Malcolm, The New Yorker Magazine, Inc. and Alfred A. Knope, Inc.'s *ANSWER TO 3rd AMENDED COMPLAINT*. Jury Trial demand.
1986		
May 1	58	Defendant's motion for summary judgment 5-30-86 at 10 a.m.
	59	–Declaration of Janet Malcolm re #58 entry.

May 14	61	Defendant's memo of points & authorities in support of motion for summary judgment 5-30-86 at 10 a.m.
May 23	62	Plaintiff's motion for leave to amend complainti [sic] 6-21-86 at 10 a.m.
	63	–Memo of points & authorities in support of #62 entry.
Jun 6	65	Plaintiff's declaration of Jeffrey Masson in opposition to motion for summary judgment, with exhibits.
Jun 6	66	Defendant's opposition to motion for leave to file fourth amended complaint.
Jun 6	67	–Declaration of Charles W. Kenady re #66 entry.
Jun 6	68	– –of Karl Olson re #66 entry.
Jun 6	69	Plaintiff's memo of points & authorities in opposition to motion for summary judgment.
Jun 13	71	Plaintiff's reply memo in support of motion to amend complaint. 6-20-86 10 a.m.
	72	Defendant's reply brief in suport [sic] of motion for summary judgment.
Jun 20	73	MINUTES: (C/R Ray Linkerman) Defendant's motion for summary judgment submitted. Plaintiff's motion for leave to amend complaint granted. Status conference not held. Order: Defendants may have 30 days to responde [sic] to amended complaint. EFL
Jul 18	75	Plaintiff's *4th AMENDED COMPLAINT* & jury trial demand.

Aug 18	76	PARTIAL SUMMARY JUDGMENT, for defendants on issue of false passages referred in paragraphs of Masson's complaint. Entered 8-21-86 Copies to counsel of record. EFL
Aug 29	77	Plaintiff's notice of motion & motion for reconsideration of the partial summary judgment order. 10-24-86 at 10 a.m.
	78	–Memo of points & atuhorities [sic] in support of motion for reconsideration. 10-24-86 at 10 a.m.
Oct 2	79	Defendants Janet Malcolm, The New Yorker magazine, Inc., and Alfred A. Knopf, Inc.'s ANSWER TO 4th AMENDED COMPLAINT. Jury trial demand.
Oct 10	80	–Opposition to motion for reconsideration of partial summary judgment order.
Oct 24	81	MINUTES: (C/R Robin Ramon) Plaintiff's motion for reconsideration of partial summary judgment, ordered denied.
Oct 24	82	ORDER: Plaintiff's motion for reconsideration denied. EFL
1987		
Mar 27	92	Defendant's notice of motion & motion for summary judgment 5-22-87 at 10 a.m.
Mar 27	93	–Memo of points & authorities re #92 entry.
Mar 27	94	–Statement of material facts not in dispute.

Mar 27	95	–Declaration of Janet Malcolm re #92 entry.
Mar 27	96	– – – Charles W. Kenady re #92 entry.
Apr 24	98	Plaintiff's response to statement material facts not in disputed [sic].
Apr 24	99	–Memo of points & authorities in opposition to motion for summary judgment.
Apr 24	100	–Declaration of Jeffrey M. Masson.
Apr 24	101	– – – Charles O. Morgan Jr.
May 15	102	Defendant's objections to inadmissible evidence cited in support of motion for summary judgment.
May 15	103	Defendant's supplemental declaration of Jane [sic] Malcolm in support of motion for summary judgment.
May 15	104	Defendant's reply brief in support of mtoion [sic] for summary judgment.
Jun 5	108	Plaintiff's analysis of certain challenged quotations
	109	Defendant's appendix in support of summary judgment motion.
Jul 9	110	Letter to courts 6-8-87 from Carles [sic] O. Morgan Jr. re In receipt of Defendants appendix in support of motion for summary judgment & wish to lodge following objections
Jul 9	111	Letter to courts 6-11-87 from Cooper, White & Cooper re writing in response to plaintiff's counsel's 6-8-letter objecting to filed appendix.

Jul 9	112	Letter to courts 6-5-87 from Cooper, White 7 [sic] Cooper re find defendants appendis [sic] in support of motion for summary judgment.
Jul 9	113	Letter to courts 7-2-87 from Charles O. Morgan Jr. re defendants engaged in misleading statements.
Aug 17	114	ORDER GRANTING SUMMARY JUDGMENT. Entered 8-17-87 Copies to counsel. EFL
Aug 17	115	JUDGMENT: For the defendants, each to bear own fees and costs. Entered 8-17-87, Copies to counsel of record. EFL
Sep 11	116	Plaintiff appellants *NOTICE OF APPEAL* Fee Paid. Copy of docket sheets and notice to counsel of record. Notice to USCA. *87 2665*
Sep 22	117	Defendants' CROSS APPEAL, Fee paid. Notice to counsel & to USCA with copies of the docket sheet 87 2700

Docket Entries – Ninth Circuit Court of Appeals
Appeal Nos. 87-2665, 87-2700

December 4, 1987	Brief for Appellant; Excerpts of Clerk's Record
January 24, 1988	Appellees' and Cross-Appellants' Brief; Supplemental Excerpt of Record
January 28, 1988	Reply Brief for Appellant's Brief for Cross-Appellee
June 16, 1988	Oral Argument and Submission
August 4, 1989	Opinion
August 19, 1989	Appellant's Petition for Rehearing and Suggestion of Appropriateness of Rehearing En Banc
February 15, 1990	Order Amending Opinion and Denying Petition for Rehearing and Rejecting Suggestion for Rehearing En Banc

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, vs. THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM, Defendants.	)	NO. C 84-7548 EFL FOURTH AMENDED COMPLAINT FOR DEFAMATION AND INVASION OF PRIVACY [JURY TRIAL DEMANDED]

Plaintiff complains and alleges as follows:

JURISDICTION

1. Plaintiff JEFFREY M. MASSON ("MASSON") is a citizen of the State of California who resides in this judicial district.

2. Defendant THE NEW YORKER MAGAZINE, INC. ("THE NEW YORKER") is a New York corporation with its principal place of business at New York, New York.

3. Defendant ALFRED A. KNOPF, INC. ("KNOPF") is a New York corporation with its principal place of business at New York, New York.

4. Defendant JANET MALCOLM is a citizen and resident of the state of New York.

5. This Court has jurisdiction over the subject matter of this action in that the Plaintiff and Defendants are of diverse citizenship and the amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

6. Venue is proper in this Court because Plaintiff resides in this judicial district and the claim which forms the subject-matter of this action arose in this judicial district.

FIRST CAUSE OF ACTION

(Against Defendant MALCOLM for Defamation.)

7. Plaintiff JEFFREY MASSON is a Sanskrit scholar and psychoanalyst who formerly served as Projects Director of the Sigmund Freud Archives. Over the course of several years, beginning around 1972 and continuing until around 1982, MASSON became the associate and confidante of persons prominent in the international psychoanalytic community, among them Dr. Anna Freud, Sigmund Freud's daughter, and Dr. Kurt Eissler, Secretary of the Sigmund Freud Archives. MASSON's association with these and other persons and his subsequent appointment as Projects Director of the Freud Archives gave him access to previously unpublished documents

pertaining to the history of psychoanalysis, including much of Sigmund Freud's personal correspondence.

8. Over the course of many years and particularly after he gained access to Freud's personal correspondence in his capacity as Projects Director of the Freud Archives, MASSON developed an original and (to members of the psychoanalytic "establishment") highly unorthodox theory concerning the origins of psychoanalytic thought. In particular, MASSON's research focused on the historical prominence of the so-called "seduction theory".

9. MASSON's research gradually revealed that Freud did not abruptly abandon the "seduction theory" in the Autumn of 1897 as previous scholarship had indicated. MASSON uncovered clear and previously undisclosed evidence of Freud's ongoing interest and belief in the "seducation [sic] theory", which holds that neurotic personality disorders originate in actual sexual abuse during childhood. MASSON's research further revealed that Freud turned his back of the seduction theory in favor of a theory more pleasing to his colleagues' sensibilities. Freud's subsequent theory held that neuroses originate in unconscious fantasies and not in actual sexual abuse at the hands of a parent or other authority figure.

10. MASSON's scholarly research led him to conclude that Freud abandoned the "seduction theory" not as a result of clinical observations, but to further his career and to placate his colleagues.

11. MASSON published his views in 1984 in a book entitled THE ASSAULT ON TRUTH: FREUD'S SUPPRESSION OF THE SEDUCTION THEORY.

12. On information and belief, MASSON's views were so unorthodox that they were perceived as a threat to the psychoanalytic "establishment." MASSON is informed and believes that, for this reason, members of this establishment and persons with connections thereto had a vested interest in discrediting MASSON and his views.

13. Thus, when Defendant MALCOLM, a writer with close ties to the psychoanalytic "establishment," wrote an article concerning MASSON for THE NEW YORKER which is the subject matter of this complaint, she focused it not primarily on MASSONS's scholarship or the research behind his work, but instead primarily on MASSON's personal life. During the latter part of 1983, MALCOLM traveled to MASSON's home in Berkeley, California and conducted a series of interviews with him, which were tape-recorded and which formed the basis for the aforesaid article. Defendant MALCOLM spoke to other persons personally and professionally associated with MASSON, and published her purported findings in a novel-length article in successive issues of THE NEW YORKER, the first of which was dated December 5, 1983. Defendant THE NEW YORKER has represented to counsel for Plaintiff that the first publication of such article occurred on November 30, 1983. MALCOLM subsequently published said article in substantially identical form in book format under the title, IN THE FREUD ARCHIVES, published by Defendant KNOPF (the "Book").

14. Defendant MALCOLM's article in THE NEW YORKER, subsequently republished in book form by KNOPF, expressly purported to be based on many hours

of tape-recorded interviews with MASSON as well as on the author's personal impressions and independent research. Many parts of the article (subsequently published in book form) purported to include extensive verbatim quotations from MASSON. In fact, many of the so-called "quotations" constituted misstatements by Defendant MALCOLM of what MASSON had actually said during his interviews with her or constituted willful distortions of the context of those statements. On information and belief, Defendant MALCOLM knowingly and deliberately misstated MASSON's words or took his words out of context in the attempt to portray MASSON, using words purportedly out of his own mouth, as unscholarly, irresponsible, vain, lacking impersonal [sic] honesty and moral integrity, and thus motivated by personal considerations in his professional dispute with members of the psychoanalytic establishment and therefore unsuited for any academic or professional position requiring personal responsibility, integrity and credibility. On information and belief, Defendant MALCOLM, also sought to enhance the gossip appeal of her own story, thereby increasing its marketability and profit potential, by making MASSON appear to IMPUGN his personal and professional integrity with his own words. Such misquotations and contextual distortions included without limitation the following:

(a) MALCOLM falsely quoted MASSON as having said that he would turn Dr. Anna Freud's house in London into "a place of sex, women, fun" if he were appointed director of the Sigmund Freud archives.

(b) MALCOLM falsely quoted MASSON as having said that he changed his middle name to Moussaieff because "it sounded better."

(c) MALCOLM falsely quoted MASSON as having said that he would wait to resign from the International Psychoanalytic Association "until I can get the most effect out of it."

(d) MALCOLM falsely quoted MASSON as having said to Dr. Kurt Eissler that he [MASSON] was "not going to give . . . back" original letters of Sigmund Freud in MASSON's possession following Eissler's request that he do so.

(e) MALCOLM willfully distorted the context of certain remarks by quoting MASSON as having responded "well, he had the wrong man" to Dr. Eissler's request that he (MASSON) "live with" his termination from the Freud Archives "in silence" because that was "the honorable thing to do." In fact, MASSON responded that Eissler "had the wrong man" when Eissler proposed that "if you [MASSON] never speak about it and you quietly and humbly accept our judgment, who knows in a few years if we don't bring you back?" The latter remarks were completely omitted from the published version of MALCOLM's article.

(f) MALCOLM willfully distorted the context of MASSON's remarks by quoting MASSON as having told the *New York Times*, *Time*, and *Newsweek* that he would "not be bound" by a promise made to the Board of Directors of the Sigmund Freud Archives not to "reveal anything that happened" at the meeting of the Board

during which MASSON was terminated as Projects Director of the Archives, implying that MASSON had not informed the Board of his intention to speak to the news media. In fact MASSON told the Board before he told the news media that he would not be bound by any promise not to reveal what transpired at such meeting.

(g) Defendant MALCOLM falsely stated that "A few days after my return to New York" following the conclusion of her interviews with MASSON, MASSON made a number of statements to her including the statement that "after Freud, he's [MASSON is] the greatest analyst who ever lived".

(h) MALCOLM falsely quoted MASSON as having said on page 38 of the Book, about himself, "I was like an intellectual gigolo – you get your pleasure from him, but you don't take him out in public,"stating with words of commercial sexual overtones that MASSON had described himself as someone whose intellect was for sale and who had been willing to be dishonest about the views he purportedly held in his scholarship and intellectual activities for the purposes of monetary gain and other personal motives.

(i) MALCOLM falsely quoted MASSON as having claimed for himself certain discoveries about the Schreber case (Freud's evidence for the theory that homosexuality originates from unconscious paranoid fantasies) thereby falsely conveying to the informed readers that MASSON was dishonest because MASSON falsely claimed credit for others' discoveries and scholastic work, when in truth MASSON acknowledged that such discoveries had been made by the New York analyst William Niederland by

falsely quoting MASSON as saying "It was the same thing with my discovery about the Schreber case," and as saying "There aren't too many interpretations possible of my discovery." (Book, page 149-150).

(j) MALCOLM falsely quoted MASSON as having admitted, when questioned about controversial views he had expressed about psychoanalysis, that "I don't know why I put it in," and MALCOLM falsely described MASSON as being continually "silent" when asked to give reasons for his alleged change into an "anti-freudian", thereby conveying to the reader the falsehood that MASSON out of his own mouth had portrayed himself as an unprincipled person with no ability or scholarship to back up his positions on Freud, when in truth and in fact MASSON repeatedly gave MALCOLM reasoned explanations for those views, which explanations MALCOLM expressed. (See Book, page 53.)

(k) On page 145 to 146 of the Book, MALCOLM invented a conversation with MASSON, the woman with whom MASSON lives, and MASSON's daughter and then falsely attributed quotes to all three persons from such conversation which they did not make, thereby falsely portraying MASSON, with words purportedly from his own mouth and their mouths, as having revealed that MASSON does not care for the feelings of elderly influential people who assisted him in his career, for the woman with whom he lives, or for his own daughter, by falsely attributing to MASSON the off-hand comment, "Denise worries too much."

(l) MALCOLM invented a conversation with MASSON about his book and then falsely quotes MASSON as

having said about his book: " 'Wait til it reaches the best-seller list, and watch how the analysts will crawl,' he crowed. 'They move whichever way the wind blows. They will want me back, they will say that MASSON is a great scholar, a major analyst – after Freud, he's the greatest analyst who ever lived. Suddenly they'll be calling, begging, cajoling: Please take back what you've said about our profession; our patients are quitting.' They'll try a short smear campaign, then they'll try to buy me, and ultimately they'll have to shut up.' " In truth and in fact, MASSON told MALCOLM that he did not expect his book to be well received and did not make the invested statements which MALCOLM puts in MASSON's mouth to convey to the reader the falsehood that MASSON "in his own words" has revealed himself "as a grandiose egotist – mean-spirited, self-serving, full of braggadicio [sic], impossibly arrogant and in the end, a self-destructive fool." ("Freudianism and its malcontents"), *Boston Globe*, May 27, 1984, at 60, col. 2.

15: In falsely attributing the aforesaid statements to MASSON and in willfully distorting the context of MASSON's remarks, Defendant MALCOLM acted intentionally and with reckless and deliberate disregard for whether or not the words she attributed to MASSON corresponded to the words MASSON actually uttered during his tape-recorded interviews with her. MALCOLM assured MASSON that the text of the article to be published in THE NEW YORKER would be meticulously reviewed by "fact-checkers" and in particular that every quotation attributed to MASSON would be taken directly from the tape-recordings and would be verified for accuracy before publication. MALCOLM advised that the

"fact-checking" process would consume hours, even days, of MASSON's time. In fact, MASSON was contacted by "fact-checkers" concerning the accuracy of MALCOLM's article for only a matter of minutes, rather than hours, during which time no verification of any of the quotations attributed to MASSON and which subsequently appeared in MALCOLM's article was sought. MASSON was not subsequently contacted by "fact-checkers" in connection with the article written by MALCOLM before publication in THE NEW YORKER, despite MALCOLM's assurances that he would be so contacted and despite MASSON's advice to MALCOLM and to THE NEW YORKER, both personally and through counsel, and both before and after publication of the article, that the article written by MALCOLM and published by THE NEW YORKER contained serious inaccuracies of fact and attributed quotation. On information and belief, MALCOLM never intended to use "fact-checkers" to verify the accuracy of the facts and quotations to be published in her article about plaintiff MASSON but rather made such assurances to MASSON falsely and with the intent to induce MASSON to speak unguardedly during extended interviews with MALCOLM in the belief that he (MASSON) would have the opportunity to correct any inaccuracies of fact or quotation prior to publication. MASSON in fact advised MALCOLM's "fact-checkers", during their limited attempt to verify certain matters to be published in MALCOLM's article, of certain inaccuracies in MALCOLM's article and that extended consultation with MASSON was warranted and indeed necessary prior to publication in order to verify the accuracy of MALCOLM's article. MALCOLM nonetheless

proceeded to publish her article in THE NEW YORKER without such verification and consultation with MASSON, well knowing that facts and attributions appearing therein were inaccurate and false or with reckless disregard of whether or not they were false.

16. In addition to the aforesaid deliberately misstated and/or out-of-context attributions and misquotations, Defendant MALCOLM deliberately omitted from her account statements made by MASSON, which were omissions rendered the context in which MASSON spoke false and misleading. Said omissions included (without limitation) Defendant MALCOLM's false statement that "At no time during our acquaintance did MASSON answer my question about what had brought on his sudden virulent anti-Freudianism." Defendant MALCOLM omitted to state that MASSON had in fact answered her question at length to explain the reasons for which his views about Freud had changed over time. Rather, Defendant MALCOLM attempted to portray MASSON as evasive and intellectually dishonest. On information and belief, Defendant MALCOLM acted intentionally and recklessly in making the aforesaid omissions.

17. As a proximate result of publication of such false and knowingly inaccurate misstatements and misquotations, and of such deliberate omissions, MASSON has been exposed to hatred, contempt, ridicule and obloquy by other members of the psychoanalytic and academic communities as well as the general public, all to his general damage in an amount not yet ascertained but in any event not less than $100,000. As a further proximate result of the aforesaid misstatements, misquotations

and omissions, MASSON has been injured in his occupations as a scholar, researcher, psychoanalyst and professor, all to his special damage in an amount not yet ascertained but in any event not less than $100,000, in that:

(a) There has been a sharp decline (to zero) in the number of new grants and funding extended to MASSON by academic and research institutions including, but not limited to, the United States Department of Health and Human Services, the John Simon Guggenheim Memorial Foundation, and the National Endowment for the Humanities. MASSON is informed and believes, and on such basis alleges, that such decline is the direct and proximate result of Defendants' defamatory publications.

(b) MASSON's ability and eligibility to obtain such grants and funding in the future has been severely impaired.

(c) MASSON's ability to obtain other employment and academic affiliations in the psychoanalytic and academic areas of his profession has been severely impaired as evidenced, in part, by his inability to obtain positions at various academic institutions including, but not limited to, the University of California, California State University, and Mills College. MASSON has been informed and does believe, and on the basis of such information and belief alleges, that such inability is the direct and proximate result of Defendants' defamatory publications.

(d) MASSON is informed and believes, and on the basis of such information and belief alleges, that he cannot engage in the clinical practice of psychoanalysis

because psychoanalysts will not make professional referrals to him, extend him any professional courtesies, or involve him in a meaningful manner in psychoanalytical conferences or functions as a result of Defendants' defamatory publications.

(e) MASSON is also informed and believes, and on such basis alleges, that said special damages are continuing and MASSON prays leave of Court to amend his complaint to insert the true amount of said losses and the actual identities of other psychoanalysts and psychoanalytic research and academic institutions and entities which have denied him professional referrals, employment or funding, after discovery in this action has commenced and the same become known to him.

18. In making the aforesaid false and deliberate inaccurate misstatements and misquotations, and the aforesaid deliberate omissions, Defendant MALCOLM acted with oppression, fraud and malice, and MASSON is entitled to an award of punitive damages.

WHEREFORE, MASSON prays for judgment as more fully set forth below.

SECOND CAUSE OF ACTION

(Against Defendant THE NEW YORKER For Defamation)

"19. MASSON incorporates by this reference as if fully restated herein, the allegations contained in paragraphs 1-18, above.

20. In republishing the false quotations and attributions contained in Defendant MALCOLM'S articles, Defendant THE NEW YORKER published statements it

knew to be false or published them with reckless and deliberate disregard of whether they were true or false. In particular, "fact-checkers" employed by the NEW YORKER to verify the accuracy of facts and quotations attributed to MASSON and who did in fact make preliminary atempts [sic] at such verification were informed by MASSON that there were serious inaccuracies in MALCOLM's article which could only be corrected through intensive review with MASSON of the matters set forth in said article, which review would likely require hours and even days. No review or "fact-checking" of more than a few minutes' duration occurred. Moreover, upon review of a galleyproof version of the second part of MALCOLM's article, MASSON through legal counsel advised both MALCOLM and NEW YORKER editors that serious inaccuracies in the article existed which ought to be corrected before publication. Despite such advice, the NEW YORKER proceeded to publish MALCOLM's article without correction and without detailed review of the inaccuracies contained therein with plaintiff MASSON.

21. As a proximate result of said false publications, MASSON has been exposed to hatred, contempt, ridicule and obloquy in the eyes of the psychoanalytic and academic communities and of the general public and he has been injured in his occupation, all to his general damage in an amount not yet ascertained but in any event not less then [sic] $100,000. As a further proximate result of the aforesaid misstatements, misquotations and omissions, MASSON has been injured in his occupations as a scholar, researcher, psychoanalyst and professor, all to his special damage in an amount not yet ascertained but in any event not less then [sic] $100,000, in that:

(a) There has been a sharp decline (to zero) in the number of new grants and funding extended to MASSON by academic and research institutions including, but not limited to, the United States Department of Health and Human Services, the John Simon Guggenheim Memorial Foundation, and the National Endowment for the Humanities. MASSON is informed and believes, and on such basis alleges, that such decline is the direct and proximate result of Defendant's defamatory publications.

(b) MASSON's ability and eligibility to obtain such grants and funding in the future has been severely impaired.

(c) MASSON's ability to obtain other employment in the psychoanalytic and academic areas of his profession has been severely impaired as evidenced, in part, by his inability to obtain positions at various academic institutions including, but not limited to, the University of California, California State University, and Mills College. MASSON has been informed and does believe, and on the basis of such information and belief alleges, that such inability is the direct and proximate result of Defendants' defamatory publications.

(d) MASSON is informed and believes, and on the basis of such information and belief alleges, that he cannot engage in the clinical practice of psychoanalysis because psychoanalysts will not make professional referrals to him, extend him any professional courtesies, or involve him in a meaningful manner in psychoanalytical conferences or functions as a result of Defendants' defamatory publications.

(e) MASSON is also informed and believes, and on such basis alleges, that said special damages are continuing and MASSON prays leave of Court to amend his complaint to insert the true amount of said losses and the actual identities of other psychoanalysts and psychoanalytic research and academic institutions and entities, which have denied him professional referrals, employment or funding after discovery in the action has commenced and the same become known to him.

22. In making the aforesaid false publications, Defendant THE NEW YORKER acted knowingly or with deliberate and reckless disregard of the truth or falsity of said publications, and further acted with oppression, fraud and malice, and MASSON is entitled to an award of punitive damages.

WHEREFORE, MASSON prays for judgment as more fully set forth below.

THIRD CAUSE OF ACTION

(Against Defendant KNOPF For Defamation)

23. MASSON incorporates by this reference as if fully restated herein, the allegations contained in paragraphs 1-22, above.

24. In republishing the false quotations and attributions contained in Defendant MALCOLM's book IN THE FREUD ARCHIVES, Defendant KNOPF published statements it knew to be false or published them with reckless and deliberate disregard of whether or not they were true or false. On information and belief, former KNOPH [sic] editor Robert Gottlieb refused to revise or correct the text

of MALCOLM's article before publication in book form despite being advised that MASSON considered the article to contain serious inaccuracies. On information and belief, Gottlieb placed his close and long-standing personal relationship with defendant MALCOLM ahead of considerations of accuracy of the facts and quotations attributed to plaintiff MASSON, and out of regard for MALCOLM knowingly or recklessly proceeded to publish MALSOLM'S [sic] article in book form without correcting the errors and inaccuracies pointed out by MASSON.

25. As a proximate result of said false publications, MASSON has been exposed to hatred, contempt, ridicule and obloquy in the eyes of the psychoanalytic and academic communities and of the general public all to his general damage in an amount less than $100,000. As a further proximate result of the aforesaid misstatements, misquotations and omissions, MASSON has been injured in his occupations as a scholar, researcher, psychoanalyst and professor, all to his special damage in an amount not yet ascertained but in any event not less then [sic] $100,000, in that:

(a) There has been a sharp decline (to zero) in the number of new grants and funding extended to MASSON by academic and researching insitutions [sic] including, but not limited to, the United States Department of Health and Human Services, the John Simon Guggenheim Memorial Foundation, and the National Endowment for the Humanities. MASSON is informed and believes, and on such basis alleges, that such decline is the direct and proximate result of Defendants' defamatory publications.

(b) MASSON's ability and eligibility to obtain such grants and funding in the future has been severely impaired.

(c) MASSON's ability to obtain other employment in the psychoanalytic and academic areas of his profession has been severely impaired as evidenced, in part, by his inability to obtain positions at various academic institutions including, but not limited to, the University of California, California State University and Mills College. MASSON has been informed and does believe, and on the basis of such information and belief alleges, that such inability is the direct and proximate result of Defendants' defamatory publications.

(d) MASSON is informed and believes, and on the basis of such information and belief alleges, that he cannot engage in the clinical practice of psychoanalysis because psychoanalysts will not make professional referrals to him, extend him any professional courtesies, or involve him in a meaningful manner in psychoanalytical conferences or functions as a result of Defendants' defamatory publications.

(e) MASSON is also informed and believes, and on such basis alleges, that said special damages are continuing and MASSON prays leave of Court to amend his complaint to insert the true amount of said losses and the actual identities of other psychoanalysts and psychoanalytic research and academic institutions and entities, which have denied him professional referrals, employment funding after discovery in this action has commenced and the same become known to him.

26. In making the aforesaid false publications, Defendant KNOPH [sic] acted knowingly or with deliberate and reckless disregard of the truth or falsity of said publications, and further acted with oppression, fraud and malice, and MASSON is entitled to an award of punitive damages.

WHEREFORE, MASSON prays for judgment as more fully set forth below.

FOURTH CAUSE OF ACTION

(Against All Defendants For Invasion of Privacy)

27. MASSON incorporates by this reference as if fully restated herein, the allegations contained in paragraphs 1-26, above.

28. Beginning with the publication of its December 5, 1983, issue, Defendant THE NEW YORKER, without MASSON's consent, invaded MASSON's right of privacy by publishing an article written by Defendant MALCOLM concerning MASSON containing deliberately false and out-of-context misquotations of statements uttered or purportedly uttered by Plaintiff MASSON. Said article by Defendants created publicity to the readership of Defendant THE NEW YORKER and of Defendant MALCOLM's book IN THE FREUD ARCHIVES published by Defendant KNOPF, which publicity placed MASSON in a false light in the public eye by incorrectly portraying MASSON as a person unsuited for acedemic [sic] or professional responsibility because he lacked personal and professional honesty, integrity and responsibility.

29. As a proximate result of the aforesaid "false light" publicity, MASSON has been exposed to hatred, contempt, ridicule and obloquy, has suffered loss of reputation and standing in the community at large and in the psychoanalytic and academic communities in particular, all of which has caused him, his family and his friends humiliation, embarrassment, mental anguish and suffering, all to his general damage in an amount not yet ascertained but in any event not less than $100,000.

30. As a further proximate result of the aforesaid "false light" publicity, MASSON has been injured in his trades and businesses as a scholar, researcher, psychoanalyst and professor, all to his special damage in an amount not yet ascertained but in any event not less then [sic] $100,000, in that:

(a) There has been a sharp decline (to zero) in the number of new grants and funding extended to MASSON by academic and research institutions including, but not limited to, the United States Department of Health and Human Services, the John Simon Guggenheim Memorial Foundation, and the National Endowment for the Humanities. MASSON is informed and believes, and on such basis alleges, that such decline is the direct and proximate result of Defendants' defamatory publications.

(b) MASSON's ability and eligibility to obtain such grants and funding in the future has been severely impaired.

(c) MASSON's ability to obtain other employment in the psychoanalytic and academic areas of his profession has been severely impaired as evidenced, in part, by

his inability to obtain positions at various academic institutions including, but not limited to, the University of California, California State University, and Mills College. MASSON has been informed and does believe, and on the basis of such information and belief alleges, that such inability is the direct and proximate result of Defendants' defamatory publications.

(d) MASSON is informed and believes, and on the basis of such information and belief alleges, that he cannot engage in the clinical practice of psychoanalysis because psychoanalysts will not make professional referrals to him, extend him any professional courtesies, or involve him in a meaningful manner in psychoanalytical conferences or functions as a result of Defendants' defamatory publications.

(e) MASSON is also informed and believes, and on such basis alleges, that said special damages are continuing and MASSON prays leave of Court to amend his complaint to insert the true amount of said losses and the actual identities of other psychoanalysts and psychoanalytic research and academic institutions and entities, which have denied him professional referrals, employment or funding after discovery in this action has commenced and the same become known to him.

31. In creating the aforesaid "false light" publicity, Defendants and each of them acted with knowledge of the falsity of the aforesaid attributions or with reckless disregard of whether or not they were true or false, as hereinabove alleged, and further acted with oppression, fraud and malice, and MASSON is therefore entitled to an

award of punitive damages in an amount of not less then [sic] ten million dollars ($10,000,000).

WHEREFORE, MASSON prays for judgment as follows:

1. For general damages in an amount not yet ascertained but in any event not less then [sic] $100,000.

2. For special damages in an amount not yet ascertained but in any event not less than $100,000.

3. For punitive damges [sic] in an amount not less than ten million dollars ($10,000,000).

4. For costs of suit herein, including a reasonable attorneys' fee.

5. For such other and further relief as the Court deems proper and just.

JURY DEMAND

Plaintiff MASSON demands trial by jury on all causes of action in this Complaint.

Dated: July 18, 1986

Respectfully submitted,

CARROLL & HAINES,

By: /s/ Michael Brooks Carroll E.F.
Michael Brooks Carroll
Attorneys for Plaintiff
JEFFREY M. MASSON

VERIFICATION

I, JEFFREY M. MASSON, declare under penalty of perjury pursuant to the laws of the state of California as

follows: that I am the Plaintiff in this matter; that I am familiar with the contents of the Amendment to Third Amended Complaint for and Fourth Amended Complaint for Defamation and Invasion of Privacy and that the matters stated therein are true.

Executed at San Francisco, California on May ___, 1986.

/s/ Jeffrey M. Masson
Jeffrey M. Masson

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Attorneys for Defendants
JANET MALCOLM, THE NEW YORKER MAGAZINE, INC., and ALFRED A. KNOPF, INC.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, v. THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM, Defendants.	No. 84 7548 EFL ANSWER TO FOURTH AMENDED COMPLAINT [Jury Trial Demanded] (Filed OCT 2-1986)

Defendants THE NEW YORKER MAGAZINE, INC. (hereinafter, "THE NEW YORKER"), ALFRED A. KNOPF, INC. (hereinafter, "KNOPF"), and JANET MALCOLM (hereinafter, "MALCOLM") answer the fourth amended complaint herein as follows:

JURISDICTION

1. Defendants lack information or belief sufficient to admit or deny the allegations of paragraph 1, and on that basis defendants deny each and every one of them.

2. Admitted.

3. Admitted.

4. Admitted.

5. Defendants lack information or belief sufficient to admit or deny the allegations of paragraph 5, and on that basis defendants deny each and every one of them.

6. Defendants lack information or belief sufficient to admit or deny the allegations of paragraph 6, and on that basis defendants deny each and every one of them.

FIRST CAUSE OF ACTION

7. Defendants are informed and believe that plaintiff has studied Sanskrit and psychoanalysis, that plaintiff was associated with the Sigmund Freud Archives as projects director and otherwise, that he was acquainted with Dr. Kurt Eissler and Dr. Anna Freud, and that in the course of the foregoing he had access to unpublished materials pertaining to psychoanalysis, including some of Freud's correspondence. Except as expressly so admitted, defendants lack information or belief sufficient to permit them to admit or deny the allegations of the subject paragraph, and on that basis defendants deny each and every one of them.

8, 9 and 10. Defendants admit that plaintiff has publicly espoused a hypothesis or group of hypotheses concerning Freud's abandonment of the seduction theory. Except as so admitted, defendants lack information or belief sufficient to permit them to admit or deny the allegations of the subject paragraphs, and on that basis defendants deny each and every one of them.

11. Defendants admit that plaintiff wrote and caused to be published in 1984 a book entitled *The Assault on Truth: Freud's Suppression of the Seduction Theory*. Except as expressly so admitted, defendants lack information or belief sufficient to permit them to admit or deny the allegations of the subject paragraph, and on that basis defendants deny each and every one of them.

12. Defendants lack information or belief sufficient to admit or deny the allegations of paragraph 12, and on that basis defendants deny each and every one of them.

13. Defendant MALCOLM wrote an article which appeared in the issues of *The New Yorker Magazine* dated December 5, 1983, and December 12, 1983. A copy of said article was filed in this action by plaintiff on or about March 1, 1985. Defendants admit that plaintiff was one of the subjects of said article, that defendant MALCOLM travelled to Berkeley, California, to speak with plaintiff in preparing the article, and that defendant MALCOLM did speak to plaintiff numerous times in Berkeley and elsewhere in preparation of the article. Defendant MALCOLM tape-recorded some but not all of her interviews with plaintiff. The interviews with plaintiff, as well as other interviews, formed a partial basis for the subject article. The book *In the Freud Archives*, published by defendant KNOPF, is substantially similar to the article, but is not identical thereto. Except as expressly admitted herein, defendants deny the allegations of paragraph 13.

14. Both the subject article and the book *In the Freud Archives* contain quotations of plaintiff, which are identified as such. The words in quotation marks in subparts (a) through (l) of Paragraph 14 appear in the subject

article, except for the words in quotation marks on lines 12-16 of page 9. Except as so admitted, these defendants deny each and every allegation of paragraph 14. Without limiting this denial, defendants specifically deny that plaintiff was inaccurately quoted in the subject publications.

15. Answering paragraph 15, defendants admit that plaintiff was contacted by fact-checkers employed by defendant NEW YORKER. Defendants also admit that an attorney purporting to speak for plaintiff telephoned defendant NEW YORKER after the subject articles had gone to press, and suggested that the articles might invade plaintiff's privacy. The allegations of paragraph 15 are in all other respects denied. Without limiting this denial, defendants specifically deny that any alleged inaccuracies were brought to their attention at any time before publication of the subject articles.

16-18. Answering paragraphs 16, 17, and 18, these defendants deny each and every allegation thereof, and specifically deny that plaintiff has been damaged in the manner or amounts stated, or in any manner or amount.

SECOND CAUSE OF ACTION

19. These defendants incorporate their answers to paragraphs 1 through 18 of the complaint.

20-22. These defendants deny each and every allegation of paragraphs 20, 21, and 22, and specifically deny that plaintiff has been damaged in the manner or amounts stated, or in any manner or amount.

THIRD CAUSE OF ACTION

23. These defendants incorporate their answers to paragraphs 1-22 of the complaint, above.

24-26. These defendants deny each and every allegation of paragraphs 24-26, and specifically deny that plaintiff has been damaged in the manner or amounts stated, or in any manner or amount.

FOURTH CAUSE OF ACTION

27. Answering paragraph 27, these defendants incorporate their answers to paragraphs 1-26, above.

28-31. These defendants deny each and every allegation of paragraphs 28 through 31, and specifically deny that plaintiff has been damaged in the manner or amounts stated, or in any manner or amount.

FIRST AFFIRMATIVE DEFENSE:
FAILURE TO STATE A CLAIM

36. The complaint, and each cause of action thereof, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE:
CONSTITUTIONAL PRIVILEGE

37. Defendants' actions in preparing the subject publications, and the publications themselves, were and are privileged and protected by the First Amendment to the United States Constitution and Article I, Section 2, of the California Constitution. Those protections and privileges defeat, limit, or reduce any potential liability to plaintiff.

THIRD AFFIRMATIVE DEFENSE: STATEMENT CONCERNING PUBLIC FIGURE

38. At all times relevant hereto, plaintiff was embroiled in one or more controversies concerning his views on the history of psychoanalysis and the etiology of mental and emotional disorders, his involvement with the Sigmund Freud Archives (hereinafter, "Archives"), the practices of the Archives concerning release of historical materials and information in their custody, plaintiff's personal and professional relations with Dr. Kurt Eissler and the late Anna Freud, and the circumstances surrounding the severance of plaintiff's relations with the Sigmund Freud Archives. These controversies sometimes involved vitriolic personal and professional attacks by and against plaintiff and others. Plaintiff charged, among other things, that Anna Freud and others connected with the Archives were engaged in the suppression of key historical truths concerning Sigmund Freud. Plaintiff also impugned the intellectual integrity of Sigmund Freud, and declared that Freud and all psychoanalysts were and are "corrupt."

39. Plaintiff sought and obtained publicity for his views both in academic circles and in the mass media. In fact plaintiff single-handedly created several of the controversies referred to herein, and played a significant and deliberately prominent role in all of them. Plaintiff voluntarily injected himself into these public controversies, and is a public figure for purposes of this lawsuit. Accordingly, defendants cannot be subject to liability for publishing the statements complained of unless plaintiff proves, in addition to all other elements of his case, that

defendants knew their statements were false, or published those statements with reckless disregard for their truth or falsity. Defendants, however, did not know the statements were false, if they were, and did not publish them with reckless disregard of truth or falsity.

FOURTH AFFIRMATIVE DEFENSE: PRIVILEGE UNDER CALIFORNIA CIVIL CODE SECTION 47(3)

40. The statements complained of were made without malice to persons interested therein by persons who were also interested, and who stood in such relation to the readers as to afford a reasonable ground for supposing the motive for the communication innocent. Accordingly, the challenged publications were and are privileged under Section 47, Subdivision 3, of the California Civil Code.

FIFTH AFFIRMATIVE DEFENSE: REPORT FOR PUBLIC BENEFIT

41. The statements complained of were a fair and true report for the public benefit, and as such were and are privileged under Section 47, Subdivision 5, and of the California Civil Code.

SIXTH AFFIRMATIVE DEFENSE: REPORT OF OFFICIAL PROCEEDING

42. The statements complained of consisted, in whole or part, of fair and true reports concerning judicial proceedings between plaintiff and the Sigmund Freud Archives, as well as proceedings within the Archives.

Under Section 47, Subdivision 4, of the California Civil Code, the publications were and are to that extent absolutely privileged.

SEVENTH AFFIRMATIVE DEFENSE:
NEUTRAL REPORTAGE

43. The statements complained of consisted, in whole or part, of neutral reports of charges made against plaintiff, a public figure, on matters of substantial public interest and importance. Accordingly, under the doctrine of neutral reportage, the statements are to that extent not actionable.

EIGHTH AFFIRMATIVE DEFENSE:
NEWSWORTHINESS

44. The publications in question were newsworthy.

NINTH AFFIRMATIVE DEFENSE:
CONSENT AND ASSUMPTION OF RISK

45. At all relevant times, plaintiff knew or should have known that defendant MALCOLM intended to write, and defendant THE NEW YORKER to publish, an article concerning plaintiff; that the article might be unflattering to plaintiff; that the article might and probably would disclose personal details of plaintiff's life; and that plaintiff would have no control over what defendants ultimately published. In particular, at various times plaintiff asked MALCOLM what she intended to put into the subject article on various subjects, *i.e.*, what she intended to write. MALCOLM repeatedly stated in response to these inquiries that she was unwilling to say

what she would write and that to do so would violate the policies of THE NEW YORKER as well as her own policies. Due to these exchanges plaintiff knew or should have known (and he in fact acknowledged) that he enjoyed no "pre-publication clearance rights" or other right or power to influence the contents of the subject articles.

46. Despite this knowledge or notice, plaintiff participated freely in the preparation of the challenged publications without requesting or receiving any assurance whatsoever about their content or his own future role in their publication. In fact, for the purpose of encouraging defendants to publish the article and thereby afford further publicity to himself, his views, and his then-forthcoming book, plaintiff made numerous statements to MALCOLM which were intended to and did induce her to believe that she was completely free to characterize plaintiff and the controversies in which plaintiff was involved as she saw fit, and to reveal such facts as she deemed pertinent to a profile of plaintiff and a description of those controversies. Among other such statements, plaintiff said that he was willing to provide written assurances that defendants MALCOLM and THE NEW YORKER were free to say anything whatsoever about him, personal or professional, and he would not sue; that the article would probably have a negative tone; that his views or statements might appear in the article in a manner he would consider distorted but "that is a risk one takes"; that he felt "everybody should talk about everything"; that he was speaking very openly and was telling MALCOLM everything he considered in any way relevant to his life connected with psychoanalysis; that

other interviewees, including Dr. Eissler, should likewise speak openly about their personal and professional relations and conflicts with plaintiff; that plaintiff understood he should and would have no control over what MALCOLM wrote; that he did not believe anything in his past should be hidden; that he strongly believed everything he had ever done, talked about, thought, or believed should be open to scrutiny; that there was nothing he had told MALCOLM which he felt she could not publish; that MALCOLM could publish anything plaintiff had told her; that plaintiff expected MALCOLM not to avoid his personal side; that there was "no reason to stay away from anything, really"; that MALCOLM could reveal anything plaintiff told her, to anyone she chose; and that plaintiff was not speaking to MALCOLM in confidence.

47. The foregoing assurances, statements, and denials, and other similar statements by plaintiff, constituted his express consent, authorization, assumption of risk, and invitation to defendants to publish the articles complained of. In addition, by his conduct plaintiff impliedly consented to the publication of those articles, and assumed the risk of any injury resulting therefrom.

TENTH AFFIRMATIVE DEFENSE: WAIVER, RELEASE, AND ESTOPPEL

48. Plaintiff's statements and conduct, in light of his knowledge, constitute an express and implied waiver, release, and relinquishment of the cause of action herein sought to be asserted.

49. Plaintiff is estopped by this words and conduct from maintaining the cause of action herein sought to be asserted.

ELEVENTH AFFIRMATIVE DEFENSE: FAILURE TO REQUEST RETRACTION

50. At no time before or after the publication of the statements complained of did plaintiff request of defendants, or any of them, that any of said statements be corrected or retracted. Plaintiff's failure to do so precludes any recovery of general or punitive damages, pursuant to Section 48a of the California Civil Code. Furthermore, and independent of that statute, plaintiff's conduct constitutes an unreasonable failure to seek to mitigate his damages, and reduces accordingly any potential liability of these answering defendants.

TWELFTH AFFIRMATIVE DEFENSE: FAULT OF PLAINTIFF

51. At all relevant times, plaintiff himself was at fault in and about the matters set forth in the complaint. Plaintiff's fault included, but was not limited to, failure to exercise reasonable care to protect his own reputational and privacy interests, and negligent, reckless, or willful misstatements to defendants resulting in the publications complained of. Plaintiff's fault proximately caused and contributed to his damage, if any, and accordingly reduces or eliminates any potential liability of these answering defendants.

THIRTEENTH AFFIRMATIVE DEFENSE: FAULT OF THIRD PERSONS

52. If the damages alleged in the complaint were in fact sustained by plaintiff, they were caused in whole or part, negligently or otherwise, by persons, firms, or entities other than these answering defendants, and the percentage of any potential liability of these defendants should be reduced accordingly under the doctrines of contribution, indemnity, and apportionment of fault.

FOURTEENTH AFFIRMATIVE DEFENSE: GOOD FAITH BELIEF IN TRUTH

53. At the time of the publications by defendants of which plaintiff complains, these answering defendants, and each of them, believed in good faith in the substantial truth thereof. Such good faith belief constitutes either justification affording a complete defense to plaintiff's claims, or mitigation reducing any potential liability of these answering defendants.

ALLEGATION IN SUPPORT OF ATTORNEYS' FEES

55. On information and belief, the complaint herein is not well grounded in fact nor warranted by existing law, and this action was not filed, nor can it be maintained, in good faith and with reasonable cause. Facts known to plaintiff and his attorneys establish as a matter of law that the publications complained of are substantially true and are not defamatory of plaintiff, that there was no actionable invasion of plaintiff's privacy, that plaintiff invited any harm he may have suffered, and that for these and other equally dispositive reasons the claims

asserted herein are utterly without merit. Notwithstanding this knowledge, plaintiff instituted the within lawsuit in order to attract public attention and thereby increase the sales of his various publications, or for other improper reasons. Accordingly, defendants will seek an award of attorneys' fees pursuant to Federal Rule 11, California Code of Civil Procedure section 1021.7, and the Court's inherent and equitable powers.

PRAYER

Defendants pray that:

1. Judgment be entered for defendants, plaintiff taking nothing;

2. Defendants be awarded their costs of suit;

3. Defendants recover their attorneys' fees; and

4. The Court grant such other and further relief as its deems proper.

JURY DEMAND

These defendants hereby demand trial by jury in this matter.

DATED: October 1, 1986.

COOPER, WHITE & COOPER
CHARLES W. KENADY
NEIL L. SHAPIRO
KARL OLSON
By /s/ Charles W. Kenady
CHARLES W. KENADY

Attorneys for Defendants
JANET MALCOLM, THE NEW YORKER MAGAZINE, INC., and ALFRED A. KNOPF, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[No. C-84-7548 EFL; August 19, 1986]

JEFFREY M. MASSON,
Plaintiff

v.

THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM,

Defendants

PARTIAL SUMMARY JUDGMENT

This document appears as Appendix C to the Petition for Writ of Certiorari

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, v. THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM, Defendants.	) No. 84 7548 EFL)) DECLARATION OF) JANET MALCOM) IN SUPPORT OF) DEFENDANTS' MOTION) FOR SUMMARY) JUDGMENT)) Date: May 22, 1987) Time: 10:00 a.m.) Place: Courtroom 4

1. I, Janet Malcolm, am the author of the two-part article "Trouble in the Archives" which appeared in *The New Yorker Magazine* on December 5 and 12, 1983, and the book "In the Freud Archives" which was published by Knopf in 1984. I make this declaration of personal knowledge and if called as a witness I could and would testify competently to the matters stated herein.

2. I have been a professional journalist for about 20 years, primarily as a staff writer for *The New Yorker Magazine*, contributing factual articles, essays and reviews. I have also written for *The New Republic*, *The Nation*, and the *New York Review of Books*.

3. I first wrote about psychoanalysis in "The Impossible Profession," a two-part article published in *The New Yorker Magazine*, which became a book.

4. I came to write about Mr. Masson as follows: I first heard of him in the summer of 1981 when a series of long articles by Ralph Blumenthal appeared in the Science section of the New York Times, dealing with Mr. Masson's research into early Freudian history and his novel perspective on Freud's seduction theory. These articles were shortly followed by a news item to the effect that Mr. Masson had been fired from his position as Projects director of the Sigmund Freud Archives. (For a fuller treatment of these events, see my book.) I clipped this item for possible future reference and, a year later, in October 1982, I telephoned Mr. Masson and told him that I thought I would like to write about him in *The New Yorker*. He responded by saying that he had had a premonition that I would call. He told me that he had a fascinating story to tell about his research, his relationship with Anna Freud, his firing from the Archives, and his disillusionment with psychoanalysis. He urged me to fly out to Berkeley as soon as possible to hear his story.

5. I spoke to the editor of the magazine, William Shawn, and he approved the idea of an article about Mr. Masson. I called Mr. Masson again and we made arrangements for my trip to California.

6. I spent approximately a week in Berkeley, sometime around Election Day of 1982, and met daily with Mr. Masson.

7. I tape-recorded a great many of my conversations with Mr. Masson in Berkeley and later on the telephone between New York and Berkeley, and most of the quotations from him in my article/book are near-verbatim selections from the recordings. There were also a great many conversations – while walking, driving and during meals in Berkeley, on the telephone, and during a later visit to New York – that were not recorded, but upon which I drew in writing my piece. During some of these untaped conversations I took notes, and during others I did not.

8. I worked on the article for about eight months and wrote it in the spring and summer of 1983. I interviewed more than a dozen individuals who had been personally or professionally acquainted with Mr. Masson. I talked to all these people at Mr. Masson's suggestion, with one exception, Elise Snyder. (Interviews, Tape 5, Side B at 59:17 to 62:8.)

9. The statement in Mr. Masson's Complaint that "Malcolm assured Masson . . . that every quotation attributed to Masson would be taken directly from the tape-recordings and would be verified for accuracy before publication" is unfounded. In all my years of writing articles for *The New Yorker* I have never made any such assurances. With one exception I have never checked quotations with a subject. I told Mr. Masson that it was not my practice to show my articles to people who appear

in them before publication, and he agreed to this condition of our work together. (Interviews, Tape 9, Side A, at 7:4-10; at 8:10-12.)

10. I do not think, and did not think before publication, that any quotations in the article or book were distorted or taken out of context. In his complaint Mr. Masson writes "she focused [her article] not primarily on Masson's scholarship or the research behind his work, but instead primarily on Masson's personal life." This is not true. The focus of the article was an episode in the history of organized psychoanalysis with special reference to the Sigmund Freud archives, and not Masson's personal life. But even if the piece had been about nothing but Mr. Masson's personal life, I believe it is my right under the First Amendment to write about what I want to and not to be dictated to by someone seeking publicity for a book. As it happens, Mr. Masson both implicitly and expressly encouraged me to write about his personal life. He said during our interviews "one doesn't want to avoid either the personal side about me and my whole life nor the side connected with my discoveries. [T]here is no reason to stay away from anything, really." (Tape 4, Side B, at 50:21-24. See also Tape 3, Side B, at 59:1-9, Mr. Masson saying he should have no control over what I wrote, and Tape 3, Side B at 60:6 to 62:28, saying that everything in his life should be open, and nothing should be hidden.)

I quoted Mr. Masson accurately, I presented him as he presented himself to me, and in writing my article/book I was consistently and solely guided by the ambition of making him as lifelike and real as possible so that my readers would get the same sense of him that I had

received from actually knowing him. I invented nothing. I never harbored the slightest ill-will toward Mr. Masson – I enjoyed his irreverence and impudence very much – and, of course, I would have preferred that he liked what I wrote about him than that he didn't. But I consider harassing legal action such as Mr. Masson's a breach of the unspoken contract between subject and author, namely that when you consent to being written about – and Mr. Masson more than consented to being written about by me – you accept the risk that the portrait of you that results may not be the one you yourself would have painted. Mr. Masson told me on several occasions that he liked my writing style and thought that my detachment from the subject, and non-affiliation with his views, would make the article more believable, and would help his cause. (*E.g.*, Tape 8, Side B at 46-48.) In another context, he volunteered to give me and *The New Yorker* a letter promising he would not sue us or Dr. Eissler. (Tape 4, Side A at 8:14 to 12:8, especially 9:2-5, 12:1-8; Tape 4, Side B at 58:7-19.)

11. Mr. Masson very much wanted me to write about him. He exhibited himself to me as an irreverent, irrepressible, disdainful, provocative person who enjoyed shocking and irritating the stuffy people of the psychoanalytic establishment. He was disdainful of most people in the world and he found most of the people in the fields of Sanskrit and psychoanalysis foolish and boring, lacking in brains, wit, and physical beauty. After reading the transcript of our conversations, I am not only more than satisfied that my portrait of Mr. Masson is accurate, but I am struck anew with how restrained it is. Far from being actuated by malice, I seem to have been actuated by a

wish to protect him from himself when he got carried away and either told me things that were deviations from conventional morality (such as his extra-marital affairs) or were nonsensical (such as his idea that psychotherapy should be an unpaid relationship between two people who go to bed together and talk about it).

12. Paragraph 14(b) of Plaintiff's Fourth Amended Complaint alleges that I falsely quoted Mr. Masson as having said that he changed his middle name to Moussaieff because "it sounded better." The primary source of this quotation is Tape 10, Side B, pages 30-31 in the tape-recorded interviews between Mr. Masson and me, although we had discussed this question several times earlier. He had volunteered that he was born with the middle name "Lloyd" and I asked him to tell me again what the name change had been about. The name "Moussaieff," Mr. Masson explained, had been his paternal grandfather's name before it was changed to Masson. He changed it because, "I just liked it" better, apparently because it sounded better. I firmly believe, and believed when I wrote the article, that the article's description of the name change accurately conveyed Mr. Masson's explanation.

13. Paragraph 14(e) of Mr. Masson's Fourth Amended Complaint alleges that I "willfully distorted the context" of certain remarks Mr. Masson made regarding Dr. Eissler's request that he "just live with" his firing in silence. ("In the Freud archives [sic]," Vintage Books edition, hereafter "Book," at 67. True and correct copies of pages from the Book are attached hereto as Exhibit A.) Mr. Masson explained that Dr. Eissler requested, "Well, you could never talk about it. You could be silent about it.

You could swallow it. I know it's painful for you but just live with it in silence." Mr. Masson told me that his response to Dr. Eissler was, "Fuck you. Why should I do that? Why? You know, why should one do that?" Dr. Eissler's rejoinder was, "Because it's the honorable thing to do and you will save face. And who knows? If you never speak about it and you quietly and humbly accept our judgment, who knows that in a few years if we don't bring you back?" Mr. Masson then said, "Well, he had the wrong man. Really, I mean, that's just not, not for me." This passage was taken directly from my type-written notes. It is also in the tape-recorded transcript, Tape 9, Side B, page 42. The omission of part of Mr. Masson's monologue was part of the selection process through which an intelligible written text is formed. There was no intention on my part to distort the contents of this statement, and I had and still have no doubt that I was accurately quoting Mr. Masson and did not distort the context of his remarks.

14. Paragraph 14(g) of Plaintiff's Fourth Amended Complaint states that I falsely quoted Mr. Masson as stating that others would one day say "after Freud, he's [Masson is] the greatest analyst who ever lived." This statement comes verbatim from a passage in my typewritten notes of statements made by Mr. Masson in a visit to my house in New York. (I later typed out notes I had written as Mr. Masson talked and used them to write the article. A true and correct copy of these notes is attached hereto as Exhibit B.) Mr. Masson predicted that after his book hit the best-seller list, "the analysts will crawl back," and will say that "after Freud, he's the greatest

analyst who ever lived." This statement was a near-repetition of what Mr. Masson had said in a telephone conversation with me after his book was accepted. Moreover, my taped interviews with Mr. Masson are replete with similar examples of extravagant statements. (*E.g.*, Tape 8, Side B, at 51:11-12 ("analysis stands or falls with me now"); Tape 9, Side A, at 30:17-19 (his book would be "the beginning of the end of analysis as a profession"); Tape 1, Side A, at 2:23-25; Tape 1, Side B at 39; Tape 2, Side A at 5:4-12; Tape 5, Side B at 33:16-26; Tape 6, Side B at 61:21 to 62:2 ("it's me alone"; "I hold a position that no other analyst holds"); Tape 13, Side B at 40:15-28; Tape 16, Side A at 16:25-28; Tape 17, Side B at 44:8-9, at 53:14-21, at 55:10-13 (his book will "bring down psychoanalysis"); Tape 19, Side A at 4:22-23, at 13:2-26; Tape 19, Side B at 35:23 to 36:15, at 41:26-27; Tape 26, Side A at 8:11-19; Tape 21, at 19:16-27 (again, he predicted that his book would be the "beginning of the end" for psychoanalysis).

15. Paragraph 14(h) of Plaintiff's Fourth Amended Complaint charges that I misquoted Mr. Masson as saying, "I was like an intellectual gigolo – you get your pleasure from him, but you don't take him out in public." On the occasion that Mr. Masson made the statements referred to in paragraph 14(g), he also stated, "I was like a fantasy of Anna Freud's. She liked to hear that analysts are such creeps, dolts, etc. I was giving her a good time. I was like an intellectual gigolo. You get your pleasure from him. I was like a very expensive cat – an elegant cat – that was dangerous to let out of the house." Those statements appear in my typewritten notes. (Exhibit B hereto.)

16 Paragraph 14(i) of plaintiff's Fourth Amended Complaint alleges that I falsely quoted Masson as saying, "It was the same thing with my discovery about the Schreber case," and as saying, "There aren't too many interpretations possible of my discovery," when in truth Masson acknowledged that such discoveries had been made by the New York analyst William Niederland. Plaintiff himself is taking the referenced quotations out of context. In a lengthy discussion at pages 77 to 81 of the book's paperback version (Exhibit A hereto), I refer to the Schreber case. Later, at pages 149-50, the above quotes appear. It was not my intention, however, nor does the article state that Masson claimed that the original or primary discoveries about the realities behind the Schreber case had been his. Mr. Masson is not quoted as having claimed to have made the discovery about Schreber's father, he is quoted as having claimed a discovery about Schreber's psychiatrist. Book p. 149. The early passages of the book (pages 77-83) explain that Masson became interested in the Schreber case after the *initial discoveries* about the Schreber case were made by Niederland. On tape, Masson claimed to have gone "a step beyond Niederland but it was important" and made a discovery of his own in the form of an article he found at the Freud house. (Tape 2, Side B at 47:22 to 50:19.) Indeed, in the book Masson is reported as acknowledging, but challenging, Niederland's position. (Paperback at 77-81, 83, 149-150.) My book, in fact, suggested that the "psychoanalytic establishment proved unequal to the task of making the Freudian position cogent." (Book at 81.)

Masson is reported in the book as having claimed to have found an 1884 article in Freud's library written by

Paul Flechsig, Schreber's psychiatrist, which had been sent to Freud and which meant that when Freud wrote his essay on Schreber he knew that castrations had taken place in the asylum where Schreber was held. (Book at 149.) Masson in fact told me that Niederland didn't know that Freud had the article by Flechsig in his possession; that "I now know for sure something that was not known before: namely that Freud wrote to Ferenczi, 'The father was a tyrant' "; and that readers could only accuse him of "discovering" the wrong thing. (Tape 9, Side A at 3:17 to 5:28.) Masson said, "I'm the first person to know that." (Tape 1, Side B at 61:25.) In fact, Mr. Masson refers on many occasions to "discovering" things about the Schreber case. (Tape 9, Side A at 3:17-19; at 5:8-9; at 5:27-28; at 4:12-14; Tape 1, Side B at 61:16 to 62:3.) In fact, one general theme of the interviews is that he "discovered" a great many things. E.g., Tape 1 at 3; Tape 2 at 29:11-13; Tape 4 at 36:26-28; Tape 4 at 50:20-28; Tape 8, Side B at 51; Tape 13, at 19:23 to 20:7; Tape 13 at 35:17-19, at 40:10-11; Tape 17, at 31:10-12; Tape 22 at 22:10-12. He also told me, "I don't think there are too many interpretations possible" of the materials he had discovered. (Tape 22 at 18:1-2.) Finally, in a letter to the Board of Directors of the Freud Archives, dated October 18, 1981, which Mr. Masson furnished me before I wrote the article, he referred to "all the discoveries I have been making during my research." (A copy of this letter is attached hereto as Exhibit C.)

17. Paragraph 14(j) of the Plaintiff's Fourth Amended Complaint alleges that I falsely quoted Masson as having admitted, "I don't know why I put it in," in reference to the last paragraph of a paper Masson wrote.

This paragraph also claims that my book falsely described Masson as being "silent" about the reasons for his change into an anti-Freudian. The passages in question are at pages 53-54 and 57-58 of the paperback version of the book (Exhibit A hereto). I was referring to a paper Masson had delivered in New Haven, a paper which I described as "scholarly and fairly quiet" and respectful of Freud. (Book at 53.) I asked him to explain what had happened since the time of that lecture/paper to change his views. I said that he "sidestepped my question" and quoted him saying, "That remark about the sterility of psychoanalysis was something I tacked on at the last minute, and it was totally gratuitous. I don't know why I put it in. The paper was very scholarly, and I thought analysts would be fascinated by my discoveries and would receive them with great warmth." (Book at 54.) After giving a long account of Masson's views, I then wrote:

> "At no time during our acquaintance did Masson answer my question about what had brought on his sudden virulent anti-Freudianism. As I came to realize, it was not the right question – as is probably the case with all unanswered (unanswerable) questions. . . . But if Masson was silent about – and possibly ignorant of – the motive for his psychoanalytic volteface, he was anything but reticent about the reversal of his fortunes that the Blumenthal articles brought about."

(Book at 57-58.)

The above passages convey my opinion that Mr. Masson gave no single, simple, satisfactory explanation for his evolution from a Freudian into an anti-Freudian, and

that on many occasions he sidestepped my question. I firmly believed that to be true, and still do. I also believe – and I explained in the article – that the question is probably *unanswerable*, and that the real question was why Mr. Masson had ever adhered to traditional Freudian views. I tried to, and did, give much of Mr. Masson's explanations of his views. But while Mr. Masson went on at great length about his views of, and condemnation of, Freud and the Freudian school, he never, at least in my opinion, gave a satisfactory explanation of what caused the transformation in his views.

Much of the material from page 54 of my book comes from Tape 1, page 3 of the interview tapes. Other portions of the material come from Tape 6, Side B, pages 50-51. As to the last paragraph of his paper, Mr. Masson said, "I think the last sentence was an in, possibly, gratuitously offensive way to end a paper to a group of analysts." (Tape 6 at 50:22-23.) That statement conveyed the impression to me that Masson "didn't know why" he put the last statement in, given its possibly offensive nature, which is how I quoted him in the book. I also remember than on one occasion Mr. Masson said, "I don't know why I put it in," which lodged itself in my mind. Finally, in a letter to the Board of Directors of the Freud Archives dated October 12, 1981, a copy of which is attached as Exhibit D hereto, at page 5 thereof, Mr. Masson said, "I agree that this paragraph of my paper was unfortunate, and poorly worded." This too conveyed the impression to me that Mr. Masson didn't know why he put the last paragraph in. I believed then, and believe now, that the book accurately conveyed Masson's views about his work

and his papers. I also gave my own views about the inevitability of the change in Masson's views.

18. Paragraph 14(k) of Plaintiff's Fourth Amended Complaint charges that I invented a conversation with Masson, his girlfriend Denise, and his daughter Simone, and then falsely attributed quotes to all three people, including the quote from him that, "Denise worries too much." There are several sources of the passage in question, which appears at pages 145-46 of the book.

I had lunch at Mr. Masson's house at which Denise, her daughter and Simone were present. Although I did not tape-record the conversation between Masson, Denise and Simone at Masson's house, I subsequently made notes on, and tape-recorded two further conversations on the same subject – that of Denise's concern about Masson's apparent indifference to the wounded feelings of Dr. Eissler. One of these conversations took place in a car on the way from San Francisco's Chinatown to the house of Frits Staal for cocktails, and the other at Frits Staal's house. The latter was tape-recorded, the former was not. Using my notes and the tape-recording to guide me, I reconstructed the lunch conversation. The phrase "Denise worries too much," which appears in neither the tape nor in my notes, is one I remembered Mr. Masson as saying at lunch and in the car. My intention in including this conversation in my article/book was to bring out an aspect of Denise's character – her empathy for a person she didn't know – and Masson's "Denise worries too much" was, I think, his way of saying that she didn't fully understand the complex situation between himself and Eissler.

19. Paragraph 14(l) of Plaintiff's Fourth Amended Complaint falsely alleges that I invented a conversation with Mr. Masson about his book and then falsely quoted him as having said, "Wait 'til it reaches the best-seller list, and watch how the analysts will crawl. . . . They move whichever way the wind blows. They will want me back, they will say that Masson is a great scholar, a major analyst – after Freud, he's the greatest analyst who ever lived. Suddenly they'll be calling, begging, cajoling: 'Please take back what you've said about our profession; our patients are quitting.' They'll try a short smear campaign, then they'll try to buy me, and ultimately they'll have to shut up." The source of these quotations is a conversation I had with Mr. Masson during a visit Mr. Masson paid to me in New York in May, 1983, when he was in New York to promote his book. I took notes of that conversation, because my tape-recorder was broken at the time (I had tripped over its cord and broken it). I later typed my notes (Exhibit B hereto) which read: "You watch when this book hits the best seller list, the analysts will crawl back. They move whichever way the wind blows. They will want me back, they will say Masson is a great scholar, a major analyst, after Freud he's the greatest analyst who every lived. Suddenly they will be calling, begging, cajoling, please take back what you've said about the profession, our patients are quitting. . . . They will try a short smear campaign, then they'll try to buy me, ultimately they will have to shut up. Judgment will be passed by history. There is no refutation of this book possible. It's going to cause a revolution in psychoanalysis." Mr. Masson had made similar statements in a phone call to me after the publisher accepted his book,

and during other telephone conversations. Finally, the statement, "Analysis stands or falls with me now," which closes the above paragraph at page 162 of the book, appears at Tape 8, Side B, at 51 of the interviews.

20. I firmly believe now, and I strongly believed before publication, that all of the material and the quotations in the article and book were substantially accurate quotations from what Mr. Masson said. I also believe that the article and book, as a whole, were fair to Mr. Masson and did not portray him in a false, derogatory or defamatory light. I have never entertained any doubt about the substantial accuracy of the quotations from Mr. Masson.

21. I have never harbored any ill will or hatred toward Mr. Masson. I did not write the article and the book with feelings of hatred, ill will or malice, or with any desire to oppress him. I have no ties whatever to the psychoanalytic establishment – in fact I am someone whose writings have displeased large numbers of psychoanalysts – and I certainly had no "vested interest in discrediting Masson and his views," as Mr. Masson alleges in the complaint. Neither, however, had I any interest in serving as a publicity agent for Mr. Masson's forthcoming book, "The Assault on Truth." My intention in writing "Trouble in the Archives" was neither to promulgate Mr. Masson's views on the seduction theory, nor my own views on his views, but rather to chronicle an extraordinary piece of psychoanalytic social history revolving around Mr. Masson's entrance into and exit from organized psychoanalysis. Two other persons, Dr. K.R. Eissler and Peter Swales, played prominent roles in the history I trace.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 26 day of March, 1987, at New York, New York.

/s/ Janet Malcolm
JANET MALCOLM

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Jeffrey Moussaieff Masson

[Stamped: ORIGINAL FILED APR 24 1987]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, v. THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM, Defendants.	No. 84 7548 EFL DECLARATION OF JEFFREY M. MASSON IN OPPOSITION TO SUMMARY JUDGMENT Date: May 22, 1987 Time: 10:00 a.m. Place: Courtroom 4

1) I, Jeffrey Moussaieff Masson, am the subject of the two-part article "Trouble in the Archives" which appeared in *The New Yorker* on December 5 and 12, 1983, and the book "In the Freud Archives" which was published by Knopf in 1984. I have full knowledge of all facts set forth in this declaration, and if called upon as a witness, could competently testify thereto.

2) I was a full professor of Sanskrit & Indian Studies at the University of Toronto from 1975 to 1980. From 1970 to 1978 I did psychoanalytic training and graduated as a full-fledged psychoanalyst in 1978. In 1980 I accepted a

post as Projects Director of the Sigmund Freud Archives. I was fired from this position in 1981 because of a disagreement over the question of the sexual abuse of children. During my tenure with the Archives I found material relating to Sigmund Freud's abandonment of his original theory, that children really were molested much more frequently than had been supposed. I found that much of this material had been suppressed by Anna Freud and other members of the psychoanalytic establishment. I talked about the significance of this historical material to a reporter from the New York Times and a two-part article was published concerning the reality of child-abuse and my views. It was this article that led to my being fired from the Archives. The New York Times also reported my firing.

3) Janet Malcolm, a staff writer for *The New Yorker* called me in October of 1982 and asked me if I would be willing to be interviewed for an article about the controversy surrounding my views. I agreed to be interviewed, and Malcolm came to Berkeley in November, 1982 for the purpose of these interviews.

4) When I first met with Malcolm in the lobby of the Claremont Hotel in Berkeley, she asked me if she could tape-record the interviews. She explained that this would be to my advantage, since it would mean there would be no misquotations. I agreed. At several points throughout our interviews, I told her I was concerned that she quote me accurately. She said that she had it all on tape, and I was not to worry since all quotations would be verbatim.

5) Malcolm was very friendly with me and my family during the week she was in Berkeley, and consequently

invited the woman I lived with, Denise Cammell and me to stay with her and her husband, Gardiner Botsford, in their home in New York. In May, 1983, when I was visiting New York to work with my editor at Farrar, Straus & Giroux, and to attend a sales-conference for my forthcoming book "The Assault on Truth: Freud's Suppression of the Seduction Theory." Denise and I stayed for four days with Janet Malcolm and her husband. It was a social visit. Malcolm arranged a party with various psychoanalysts she knew for the first evening, and tape-recorded that meeting as she thought it might be interesting to preserve the disagreements. In fact, however, nothing from that tape-recorded meeting was used in her book. One of the reasons Malcolm said she wished to meet with me in May was for her to acquire a better grasp of the work I was preparing on Freud's letters to Fliess. (I subsequently published the results of that work with Harvard University Press: "The Complete Letters of Sigmund Freud to Wilhelm Fliess, 1887-1904." Edited and translated by Jeffrey M. Masson. Cambridge: The Belknap Press of Harvard University Press, 1985). Malcolm, as the tapes confirm, asked me to bring along the manuscript I was working on so that we could talk about it. We did this. The first evening I was there, Malcolm showed me a new book, published by Dr. K.R. Eissler, the head of the Freud Archives. Naturally I was very interested in the book, and spent the night reading it. The next morning, I was very disturbed by the content of the book, and went down early to breakfast. Malcolm was there, and she and I talked about the book for nearly an hour before Denise appeared. Denise asked us what the excitement was

about, and I explained that I thought the book was terrible, and that Malcolm could not understand why I would care. This is confirmed by Denise Cammell's deposition, my deposition, Malcolm's deposition, and a letter I subsequently wrote to Malcolm about the incident (Exhibit 1). Apart from working on the letters one afternoon, this was the only occasion Malcolm and I were alone. At all other times Denise Cammell was present, and on many occasions Malcolm's husband, Gardiner Botsford, was there as well. Malcolm asked Denise and me to come with her to the offices of *The New Yorker* magazine to meet some of the staff. We did this, and I remember in particular being introduced to the fact-checking department. At the time Malcolm said to me and Denise that I would be spending a lot of time with these people going over the article. We had one dinner with her daughter, another dinner with her husband. Most of the time, however, I was busy working at my publishers. There was no time when Malcolm and I discussed any of the matters written about in Defendant's book. Once she took me to her work room and showed me that she was well into the writing of the book, but said she did not want me to see what she had written. She invited Robert Gottlieb, the president of Knopf, and his family over to meet us and we talked, then, briefly about psychoanalysis and her work. But the visit was primarily a social one. Malcolm never took notes. She wanted to tape the meeting with the analysts, but there was no occasion when she said anything about her tape-recorder being broken. She never told me that anything we talked about would be used in her book, and indeed, in her book, she does not mention this New York visit at all. I never saw her take notes, nor did she ask me

any questions about the material for her book. On the contrary, she told me that she was in the middle of writing it, had nearly finished, and did not want to talk about it. She was very friendly and asked if she could stay with us when she came out to Berkeley later that year. We agreed.

6) Malcolm repeatedly assured me that the quotations ascribed to me would be absolutely accurate, verbatim quotations, since they would come directly from her tapes. There was no need, therefore, for the fact-checkers to read the quotations back to me, since there was a perfect record of them. However, all facts, she said, would be checked very carefully by the famed fact-checker department of *the New Yorker*, and I would be spending a good deal of time on this with them.

7) When Nancy Franklin from the fact-checking department phoned me one day and began checking facts that clearly came from conversations with me, I became alarmed at the number of errors. For example, Franklin asked me if it was correct that I had gotten my ex-wife, Terri, interested in psychoanalysis. No, I explained. Terri was in analysis when I met her. I wondered how such an error could occur, since I had carefully explained this to Malcolm. She also asked if Terri was Polish, and I said she was not, she was a Jew from Poland, and wanted this distinction made very carefully, since as a child she had been in the Warsaw Ghetto and had suffered from the anti-Semitism of the Poles. She did not want to be mistaken for a Pole. I explained to Franklin that this error was completely incomprehensible to me. Then she asked me if my father was from Bessarabia, and I said that I had never even heard of Bessarabia, that my father was from

Boukhara. At this point I became alarmed at the accuracy of the quotations being ascribed to me. I realized there were errors, serious errors, and I told Nancy Franklin of my concern. I asked her if it would be possible for her to read back all the quotations ascribed to me, since we were finding so many errors in the few passages she asked me about. She said this was not possible, but that I was not to worry, there were tape-recordings of all the conversations, and they would be verbatim and accurate. She then asked me if it was true that Eissler returned my letters unopened. I said that was totally untrue. I was now quite upset, and asked how these falsehoods could appear in Malcolm's writing, if everything was on tape. We argued over this, and I said that I insisted on having the quotations checked with me. I told her I was now certain that there were many innaccuracies [sic] and that it was absolutely necessary to verify them. I asked her to speak with Malcolm and tell her of my concern and get back to me. She said she would. I never heard from her again. If we look at the galleys of the fact-checker, we see that all of the corrections were made. But none of them, in fact, were incorporated into the article by Malcolm. (In the book, as opposed to the articles, one of the changes was made. In her article Malcolm had written about Eissler: "whose letters he now returns unread" whereas in the book she has changed it to "whose letters he no longer answers.") In her deposition Nancy Franklin testified that she changed the comments about my having gotten Terri interested in analysis to: "I got her interested in writing about psychoanalysis." In her galley, the change was made, and next to it is a query: "Where did this come

from?" But in the articles and book, the falsity remains (Exhibits 2, 3, 4, 5).

8) Paragraph 14 (b) of Plaintiff's Fourth Amended Complaint deals with my middle names. In the book on page 36, Malcolm quotes me as saying "I decide to change my middle name to Moussaieff – it sounded better." She has me say this to her in a restaurant, in Berkeley. I never said this to Malcolm, either in Berkeley, or at any other time during our acquaintance. It is not true that this was the reason I changed my name. When Malcolm called me on the telephone to discuss the reason for the name-change I explained to her that Moussaieff had been the family name for centuries until my Grandfather, afraid of anti-Semitism in France, changed it to Masson. As part of my psychoanalysis, I wanted to get back to my roots and I also did not wish to disguise the fact that I was Jewish, and so I changed my last name back to Moussaieff, the original family name. But my wife, Terri, convinced me that it would be better as my middle name, since it was very difficult to spell and pronounce, and the same purpose would be achieved. Malcolm and I had discussed the matter before the telephone conversation, but she said she wanted to make certain she got the story straight, and so called me about it. She knew all the facts, but presented none of them to her readers.

9) Paragraph 14 (g) of Plaintiff's Fourth Amended Complaint refers to a conversation that Malcolm claimed took place over the telephone, a few days after she left Berkeley (p. 162):

> A few days after my return to New York, Masson, in a state of elation, telephoned me to say that Farrar, Straus & Giroux had taken *The*

> *Assault on Truth*. "Wait till it reaches the best-seller list, and watch how the analysts will crawl," he crowed. "They move whichever way the wind blows. They will want me back, they will say that Masson is a great scholar, a major analyst – after Freud, he's the greatest analyst who ever lived. Suddenly they'll be calling, begging, cajoling: 'Please take back what you've said about our profession; our patients are quitting.' They'll try a short smear campaign, then they'll try to buy me, and ultimately they'll have to shut up. Judgment will be passed by history. There is no possible refutation of this book. It's going to cause a revolution in psychoanalysis.

No such conversation ever took place. There are no notes or tapes of such a conversation. Now Malcolm claims that I told her these things in New York during my visit there in May, 1983. This is completely false. I never said this in New York, or at any other time, and Malcolm knows that the entire conversation is a fabrication. She knows it because I told her, over and over, that analysts would not accept my book or have a good word to say about it. In her defense, Malcolm says that one of the sentences that she added to this spurious conversation is to be found on tape: "Analysis stands or falls with me now." That is correct (it is from tape 8, p. 51, Exhibit 6), but note that Malcolm has completely distorted both the context and the remark itself, by not giving it in full. Here is what I actually said:

> "Yeah, but I've become, for better or for worse, analysis stands or falls with me now."
>
> Malcolm: "Well, that's a very grandiose thing to say."

> Masson: "Yeah, but it's got nothing to do with me. It's got to do with the things I discovered."

This conversation took place in November, 1982, in Berkeley. The conversation, in fact, was about Defendants' book, not my book (I am talking about how Malcolm can make me appear and why what I have been doing is of any importance). So Malcolm, quite apart from not letting the reader know that I qualified and explained my statement has taken one sentence from a real tape and added it to a discussion she claims took place in New York on a different occasion some seven months later. In her original manuscript, Malcolm wrote the passage without including this sentence (Exhibit 7); it was added later by pencil in the margin of a galley, apparently as an afterthought (Exhibit 8). In her handwritten notebook (vol. 3) Malcolm has a page where she has a note of me saying:

> "And when I come along and say, wait a minute, here are all these letters, they are just embarrassed out of their mind. I assure you, most of the reviews are going to settle on my personality rather than on the material." (Exhibit 9)

So Malcolm had, in her own handwriting, proof that the quote she ascribes to me could not be accurate. At no time during our acquaintance did I ever express any of the sentiments that Malcolm ascribes to me in that passage. I never told her that I expected analysts to like my book and call me a great scholar, I never told her that they would try to buy me, I never told her there was no refutation possible of my book, and so on. The whole passage is completely in contradiction to what I believe and what I told Malcolm over and over in our taped conversations, as is clear from reading the transcripts of those tapes. The passage is a complete fabrication.

10) Paragraph 14 (h) of Plaintiff's Fourth Amended Complaint charges Defendants with misquoting me by having me say: "I was like an intellectual gigolo – you get your pleasure from him, but you don't take him out in public." I never said such a thing about myself, and I am not aware of anyone else saying this about me either. I have stated on many occasions that my intellect is not for sale. As the tapes demonstrate, I told Malcolm on many occasions that I felt I could not do differently than I had done, I could not remain silent about what I consider a great injustice. Malcolm kept asking why I jeopardized my career, why I spoke out on issues that I knew would not be acceptable to orthodox Freudians, and I stated to her over and over that I had no choice, that I believed, deeply, in the things I was saying, and asked her how I could pretend that I did not? I asked her how I could remain silent while I felt I had learned about a terrible but significant secret in the history of psychoanalysis? I said it went against my character. I told Malcolm over and over that I was *not* somebody who would simply try to please his elders or his superiors merely in order to advance his own career. I said that went against everything I believed, everything I stood for. Malcolm knew this. That was the main point of our discussions. I never made this statement to Malcolm in New York or at any other time. Malcolm claims in the book that I said this to her in Berkeley, while we were having lunch at Chez Panisse. This is a false [sic]. She later claimed that it was taped, since this entire lunch was taped. It is not on the tape. Then she said I told it to her in New York. This is false too.

11) Paragraph 14 (i) of plaintiff's Fourth Amended Complaint charges Defendants with inventing several passages about the Schreber case. My complaint is that although I told Malcolm several times that Niederland made the initial discoveries about Schreber, and I had simply gone a step beyond him, she does not say this in the book. On the contrary, she states on p. 149 of the book: "It was the same thing with my discovery about the Schreber case. That was even more appalling." She does not mention Niederland at all in that context. I never claimed to make this discovery which, as is commonly known in the field, was made by Niederland, but the statement implies I am falsely making that claim. I never told her those two sentences at all. Malcolm has simply invented them. In the actual tape (2, p. 47) which Malcolm said she used, I say very clearly: "You know, it's interesting because that comes up in the Schreber case. That it was Niederland, this New York analyst who discovered for the first time . . . " (See Morgan Decl. Exhibit 26). Had Defendants reproduced *this* statement, their reader would have been given a fair account. But Defendants omit this. Astonishingly, in her Declaration at p. 10, Malcolm declares: "In the book Masson is reported as acknowledging, but challenging, Niederland's position." But that is simply not true. That is my complaint, that the book does *not* show me acknowledging Niederland's priority. Defendants have transposed what I really say in the tapes with what Malcolm reports me as saying in the book. In the tape (2, p. 47) I do in fact say: "Now what I did, I went a step beyond Niederland but it was important." Malcolm, contrary to what she claims, does *not* report this in the book. Moreover, Malcolm also has me

say that what Freud did with respect to Schreber was an act of "moral cowardice." I never said any such thing. Malcolm, in her defense, claims that *on another occasion* I said that what Freud did to *Ferenczi* could be seen as a moral failure. That is perfectly true, but the context is entirely different, and I did not use "moral failure" in the sense of "moral cowardice," nor did I ever imply Freud was guilty of "moral cowardice" in general. Then Defendants quote me as saying: "There aren't too many interpretations possible of my discovery," Masson said grimly." [sic] But I never said this, grimly or not. Malcolm, by her own admission, has taken a statement from a completely different context, namely the many passages that have been omitted from the published Freud/Fliess letters, and altered the ending, and then tacked it on here. What I actually said, in a discussion about child abuse on tape 22, p. 18 is:

> "But it, yeah, but I don't think there are too many interpretations possible of this kind of material. You know it's just overwhelming the amount of, of information that's been suppressed and so on. I mean it's clear to me that Anna Freud and Ernst Kris just wouldn't allow Freud to say what he wanted to say." (see Morgan Decl. Exhibit 27).

As we can see, Malcolm has simply taken over one of these sentences "I don't think there are too many interpretations possible of this kind of material" and changed it to "there aren't too many interpretations possible of my discovery" and put it in a wholly different context. Moreover, it is in the context of the Freud/Fliess material, (tape 22, p. 18), that I go on to say that Eissler would have admitted that Anna Freud and Ernst Kris "just wouldn't

allow Freud to say what he wanted to say." Malcolm has taken this statement and grafted it onto the discussion about Schreber, where she has me say: "I think Eissler would have admitted I was right." But in that actual discussion, the tape (2, p. 29) reveals that what I said was precisely the opposite: "What will Eissler do with it? What will he say in excuse? Cause he will find an excuse. He'll say, "It's perfectly normal that Freud didn't mention it." Malcolm even says to me at that point on the tape: "Well that would be interesting: what reason he would give." (Morgan, Decl. Exhibit 26). So Malcolm knew that I claimed the opposite of what was printed. Moreover, in her notebook, she has this passage written out, and in bold writing, in the margin, she writes: "He [Eissler] will find an excuse." (Exhibit 10)

12) Paragraph 14 (j) of the Fourth Amended Complaint charges Defendants with falsely quoting me as having admitted "I don't know why I put in," in reference to the last paragraph of a paper I wrote. This paragraph also charges Defendants with describing me as "silent" about the reasons I changed my mind about Freud. But in the book (p. 53) Malcolm claims that I was on the telephone and that when I hung up she told me about her impressions of the paper I had written earlier and asked me why I had changed my views. She then said that I sidestepped her question and told her "That remark about the sterility of psychoanalysis was something I tacked on at the last minute, and it was totally gratuitous. I don't know why I put it in." But this is completely false. I never said that to Malcolm. In fact, during the actual conversation that Malcolm is referring to (which is recorded) I was not on the phone, she did not ask me a question, and I did not

answer her with the quotes she ascribes to me. (See Morgan Decl. Para. 6) Indeed, this question of the last paragraph came up frequently in our conversations, because it was quoted twice in the *New York Times*, and was the reason Eissler gave for firing me. Malcolm knew it was critical. So when she asked me, in reality, why I said it, I told her because I really believed it. In fact, I repeated this six times in the very conversation Malcolm cites: "I thought that it was, was true." to [sic] which Malcolm answered: "Yeah, yeah, I see." I then go on to say: "I really believe it . . . I must say one thing that I really believe. . . . I really do believe psychoanalysis is sterile . . . I believe that one . . . that's what I believe." I did state that the *wording* was possibly hurtful, and that it could be expressed better, but that I believed the content. Also, I had stated to Malcolm several times that I had spent a great deal of time on that last paragraph, agonizing over it. Yet she reports me as saying that I "tacked it on at the last minute" (something I never said) which makes me seem as if I don't know what I'm doing. Since, as Malcolm admits, the remark had been widely publicized, I believe a reader learning from Malcolm, that I had tacked it on at the last minute" and "didn't know why I had put it in" would reasonably conclude that I was an irresponsible and untrustworthy fool.

As for my being "silent" about my reasons for changing my mind about Freud (her book, p. 58) this is absurd, as Malcolm, in her deposition acknowledges. I told her over and over precisely why I changed my views, and I understood that was the whole point of her coming to Berkeley to interview me. Now she claims that by the word

"silent" she is merely expressing her opinion: (Mal. Depo., p. 312):

> "Let me put it this way. I never said, "Jeff, what has brought on your sudden virulent anti-Freudianism," as far as I can remember. Maybe you can find it in the testimony and I am mistaken. I am talking about my state of mind here and not Mr. Masson's." (Exhibit 11)

13) Paragraph 14 (k) of Plaintiff's Fourth Amended Complaint charges that Defendants invented the phrase "Denise worries too much" (among others). No such conversion took place at lunch. It is true that Malcolm's notes contain some of Denise's questions, and I am prepared to accept that anything in Malcolm's handwritten notes are genuine (indeed, our case rests on the fact that Malcolm took perfectly good notes, but did not stick to them when writing her piece – we have not challenged a single passage from her handwritten notes or from the tape-recorded conversations). But I never said "Denise worries too much." This is completely out of character. I would never make light of Denise's deepest concern, and in Malcolm's notes, Denise is stating her legitimate concern for the feelings of Dr. Eissler and Dr. Gardiner. I told Malcolm the entire story about Eissler before I told it in such detail to Denise. So Denise was hearing for the first time much of this material. It is only natural that she should be concerned. Needless to say, I expressed in some depth to Denise precisely why I did what I felt I had to do. I did not feel I was betraying a friendship. On the contrary, as I often said to Malcolm and to Denise and to others, I felt that Eissler had betrayed me, by so easily giving in to the psychoanalytic establishment when he fired me, instead of standing up for my right to express

what I saw as the truth, even if he disagreed with me (as he did). I felt very badly treated by Dr. Eissler. But what Malcolm quotes is a fiction. She has no notes to back it up. Moreover, at Frits Staal's house, when the topic came up, I did not respond the way Malcolm has me respond. This is clear from the transcript of that conversation, as well as from Malcolm's notes. What, in fact, I told Denise, in the real conversation, satisfied her, and she said: "That I feel much better about, that I can deal with." The conversation with my daughter was completely invented. This is proved by the galleys for Nov. 7, where the statement "I miss Hanuman" is placed in a different location. (Exhibit 12) In the final version, however, this passage is placed after Denise asks about betrayal. Both cannot be true.

14) In a conversation with Janet Malcolm on the telephone in 1983 when we were discussing her getting Eissler to agree to talk, I offered to give both Eissler and the New Yorker a letter stating that I would not sue either party for any statement that Eissler made about me in order that Eissler could feel free to discuss me with Malcolm.

15) When I told Malcolm that my firing by the Freud Archives had made me unemployable as a teacher, analyst, or grant recipient, I was referring only to such employment in the field of psychoanalysis. Similarly, my lawsuit related to the same claim. At the time, I had no prospects in other fields. But since being fired by the Archives, I took up research into the area of the history of child abuse, violence toward women, the history of psychiatry, and so on, and I would have been well suited to a university position in one of these fields. Malcolm's work

has made this impossible. Who, after all, would give a position of intellectual responsibility to somebody who had called himself "an intellectual gigolo?"

16) In their Statement of Material Facts not in Dispute, Paragraph 8, Defendants have once again distorted conversations with me when they say I was "very keyed up"and "excited" and discussed a book by Dr. Eissler about Victor Tausk's suicide. I was "very keyed up" and "excited" over the book by Dr. Eissler, not about anything else. During the visit to New York, no notes were ever taken in my presence, and there was no conversation in which I made the statements that are referred to in Defendants' Statement of Material Facts not in Dispute, paragraph 9.

17) In Defendants' Statement of Material Facts not in Dispute, paragraph 10, they seek to have me admit to a "conversation" which could well include the statements that I deny having made. I did talk to Janet Malcolm in New York at about the time of a sales conference at which I addressed my publishers [sic] representatives and my publisher did expect my book to do "quite well." I did not, however, make the statements attributed to me on lines 15-19 of paragraph 9 of said statement.

18) Defendants, in claiming that I agree that I am careless of other people's feelings (Statement of Material Facts Not in Dispute, Paragraph 14) are again misquoting a statement of mine. In my deposition, when responding to questions regarding what Professor Daniel H.H. Ingalls had written about me I merely commented that the analysis was "a very fair balanced portrait of my

positive and negative traits." I did not testify that I necessarily agreed with Professor Ingalls' analysis.

19) When I referred to myself, in my law suit against the Sigmund Freud Archives as a "pariah" I was referring to the psychoanalytic community only, not to the intellectual community in general.

20) In her book on page 33 Malcolm quotes me as saying that I would turn Maresfield Gardens (Freud's house) into "a place of sex, women, fun. It would have been like the change in the *Wizard of Oz*, from black-and-white into color." She quotes me as saying this in a restaurant in Berkeley, in November, 1982. I never said this to Malcolm, as the tapes clearly reveal. Now Malcolm contends that I said it in New York in May, 1983 (she has it on her typewritten notes of that alleged conversation). I never said this in New York either. I never said it at any time. My actual words, as found on the tape (9, 23), were: "Oh it's a beautiful house. But it's dark and somber and nothing went on in there. Boy, I was going to renovate it and open it up, and the sun would come in and there would be people and – well, that's what it needs, but it is an incredible storehouse." (Exhibit 13) This passage is what Malcolm actually used in her manuscript, but later crossed it out and substituted the passage she had invented.

21) After Malcolm's work appeared, I did some serious research in the field of the history of psychiatry, and attitudes toward child abuse and violence to women. This culminated in a recent book *A Dark Science: Women, Sexuality and Psychiatry in the 19th Century* (New York: Farrar, Straus & Giroux, 1986). On the basis of this research, I

hoped to find a university position again, even if not necessarily at the same level I had been earlier (I had been a full professor, but was now willing to apply as a lecturer). I have written to more than fifty universities around the country seeking a teaching position. I also wrote to many community and junior colleges in the Bay area. I offered to teach full or part time, in a variety of different departments (including women's studies, history, psychology, etc.). I have received nothing but negative replies. I have every reason to believe this is related to Defendants' articles and book (almost all the reviews of my recent books, *A Dark Science* and *The Freud/Fliess Letters*, mention Defendants' book.) I have seen at least fifty articles written about me which are explicitly based on Defendants' pieces. Not a single one has anything good to say. On the contrary, they all apparently felt justified in calling me various names, and saying their judgments were based on words from my own mouth that Malcolm quoted verbatim. Here are some typical examples (a full list is found as my answer to Interrogatory No. 16, in Plaintiff's Answer to Defendants' 1st set of Interrogatories):

> "Malcolm's Masson is a megalomaniac . . . a raving showman more carnival huckster than serious researcher;" "a fool, a charlatan, a madman;" "a devastating portrait of Masson as opportunist and vengeful outcast;" "Malcolm portrays Masson as . . . concerned only with gaining maximum publicity for himself, rather than with scholarship or the establishment of truth;" "Malcolm bitterly attacks Masson's character, personal and professional;" "Masson . . . emerges as a grandiose egotist – mean-spirited, self-serving, full of braggadocio, impossibly arrogant, and, in the end, a self-

> destructive fool. But it is not Janet Malcolm who calls him such; his own words reveal this psychological profile;" "a veritable Iago papered over with charm yet filled with motiveless malignity . . . a predator;" "Malcolm's portrait of Masson is devastating: largely through his own words he emerges as a feverish jumble of vanity, self-destruction, childishness and ruthlessness;" "vindictive, narcissistic;" "an unstable publicity seeker;" "impulsive, grasping . . . restless and feckless . . . remarkably free of a Freudian superego;" "a scoundrel of sort . . . narcissistic adventurer . . . manic delusions;: "an apparent opportunist if ever there was one;" "a startling grandiosity and a readiness to distort and to malign in his own interest without regard to the facts . . . a psychopathic personality;" and so on. These statements have caused Masson to be virtually unemployable by any serious organization.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California, this 24th day of April, 1987.

/s/ J.M. Masson
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, v. THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM, Defendants.	No. 84 7548 EFL SUPPLEMENTAL DECLARATION OF JANET MALCOLM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT Date: May 22, 1987 Time: 10:00 a.m. Place: Courtroom 4

1. I, Janet Malcolm, am the author of the two-part article "Trouble in the Archives" which appeared in *The New Yorker Magazine* on December 5 and 12, 1983, and the book, "In the Freud Archives" which was published by Knopf in 1984. I make this declaration of personal knowledge and if called as a witness I could and would testify competently to the matters stated herein.

2. Plaintiff claims that in a letter to the editor of the New York Times Book Review I stated that everything in the articles and book was on tape. This is not so. In the letter (Exhibit 16 to Charles Morgan's declaration in

Opposition to Motion for Summary Judgment) I answered Mr. Masson's letter to the same publication which stated that my portrait of him "presupposes a familiarity far greater than could possibly have been acquired in the few short hours Miss Malcolm and I spent together." I responded that the portrait is based on more than 40 hours of tape-recorded conversations with Mr. Masson which began in November 1982 and continued over the next eight months. I concluded, "Everything I do quote him as saying was said by him, almost word for word. (The "almost" refers to changes made for the sake of correct syntax.) I would be glad to play the tapes of my conversations with Mr. Masson to the editors of The Book Review whenever they have 40 or 50 short hours to spare." Everything I said in that letter is true: (1) the book is primarily based on the tapes; (2) Mr. Masson did say everything I quoted him as saying; and (3) I had 40 or 50 hours of tapes with Mr. Masson, not a "few short hours" as Mr. Masson stated. I did not say that *everything* in the book was on the tapes. I was simply stating that there was substance to the quotations, and that most (indeed, at least 95 percent) of the quotations attributed to Mr. Masson came from the tapes.

3. I never told anyone, including Mr. Shawn, that *all* of the quotations from Mr. Masson were on tape. In point of fact, however, I did not distinguish between passages on tape and passages which were not on tape. Both the hand-written notes which I took when Mr. Masson talked to me in untaped conversations and the transcriptions I took from the tapes ended up in typewritten notes which I used when I began writing the articles. Since I was then using solely the typewritten notes, I did not differentiate

between things Mr. Masson had told me on tape and comments he made in our untaped conversations.

4. Attached as Exhibit A hereto are true and correct copies of various pages (pages 36-38, 53-56, and 148) of the book *In the Freud Archives*, which I wrote and which is the subject of this litigation.

5. Attached [sic] as Exhibit B are true and correct copies of pages from an accurate transcription of my deposition taken on December 8-10, 1986. These are pages 55-57, 64-65 and 165-66 from December 8, pages 311-313 from December 9, and pages 275, 295-98, and 302-03 from the December 10 deposition. (The Court Reporter inadvertently did not number the pages from the December 10, 1986 deposition sequentially to the December 9 deposition, but rather sequentially to December 8, which is why there is overlapping between the December 9 and 10 page numbers. Although the Court Reporter later corrected his error, Mr. Morgan has used the original, non-sequential page numbers, so for ease of reference I am using those page numbers, too.)

6. Attached as Exhibits C, D, E, F, G, H and I to this supplemental declaration are copies of various pages from the taped interviews between me and Mr. Masson, which for purposes of the present motion I will accept as accurate transcripts of those interviews.

7. Mr. Masson, in his declaration (¶11) states that the quotation, "There aren't too many interpretations possible of my discovery," which is derived from Tape 22, page 18, of the interview transcript tapes, was made in a "completely different context" by my "own admission." I make no such admission. Plaintiff's own declaration

makes it unclear what context he believes the statement was made in: "the many passages that have been omitted from the published Freud/Fliess letters" (Masson's Decl. at page 14), or "a discussion about child abuse." (Masson Decl. at page 15.) Although Mr. Masson claims the statement was about child abuse and was made in a "wholly different context," (Masson Decl. page 15), I believed while writing the piece – and believe now – that his statement at Tape 22, page 18, was applicable to the Schreber case. Moreover, Mr. Masson at another point in our interviews (Tape 1, page 61), in a discussion of child abuse and his theory that child abuse is the cause of mental illness, stated,

> "Because it is always a re– reality, and that produces then all kinds of perverse fantasies. But in order to understand the genesis, I mean, it's like Schreber. Can you understand Schreber unless you know what his father did to him? Freud thought you could and it's not true. Moreover, Freud is lying. I found a letter just last week, an unpublished letter in which he tells Ferenczi, 'Can you imagine? The father was a tyrant.' [There was a] whole story about the father. He knew about the father. But he wouldn't publish it. When he came to write his article he omitted it. And that was not known. And I'm the first person to know that. Now that, I [illegible], blatant – Why would Freud do that?"

Thus, Mr. Masson's statement, "There aren't too many interpretations possible of the materials I discovered" is applicable to the Schreber case. Confronted with the various discussions we had of the Schreber case (*see, e.g.*, Tape 2, pages 47-51, and discussions above) and the discoveries Mr. Masson claimed with regard to it, I wrote a passage that I believed then and still believe now was

accurate. I certainly did not (and do not) believe that the gist of the passage was inaccurate or portrayed Mr. Masson in a false or defamatory light.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in New York, New York, on May 13, 1987.

/s/ Janet Malcolm
Janet Malcolm

In The Freud Archives at page 36

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My father is a gem merchant who doesn't like to stay in any one place too long. His father was a gem merchant, too – a Bessarabian gem merchant, named Moussaieff, who went to Paris in the twenties and adopted the name Masson. My parents named me Jeffrey Lloyd Masson, but in 1975 I decided to change my middle name to Moussaieff – it sounded better. We had moved all through my childhood – from Chicago, where I was born, to L.A. to Arizona to Hawaii and back to L.A., and then to Switzerland – so moving to South America wasn't such a big deal.

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Tape 10 – Side B at 30:6-31:27

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MALCOLM: Well, okay. Next question: Uh, what, what is your real name?

MASSON: Jeffrey Moussaieff Masson.

MALCOLM: But didn't you say there was some other name that you were first born with?

MASSON: Oh, Lloyd. Yeah, I changed my middle name. I didn't like it.

MALCOLM: Uh, so you used to be Jeffrey Lloyd Masson?

MASSON: Right, and then my dad, my dad's family name used to be Moussaieff, so I –

MALCOLM: What was his name when he was born?

MASSON: Uh, Masson, also. But his dad was called Moussaieff. M-o-u-s-s-a-i-e-f-f.

MALCOLM: So when did your dad become Masson?

MASSON: When he was born, he was Masson.

MALCOLM: So his father had already changed –?

MASSON: Yeah, his father changed it.

MALCOLM: – it to Masson?

MASSON: That's right.

MALCOLM: Um-hmm.

MASSON: Cause they were – my, my grandfather lived in France.

MALCOLM: And there he become Masson?

MASSON: That's right.

MALCOLM: I see.

MASSON: Just to hide his Jewishness. I'm sure.

MALCOLM: Um-hmm. And, uh, so that was made in Paris by your father's father? That change?

MASSON: That's right.

MALCOLM: And then you intro – reintroduced Moussaieff?

MASSON: Well, I first took it as my last name, and Terri objected that nobody could pronounce it and nobody knew how to spell it, and it wasn't the name that she knew me by, and so I said "Okay."

MALCOLM: But you wanted to change it, to just remove Masson, didn't you?

MASSON: Yeah, I wanted to get back Moussaieff.

MALCOLM: Yeah, when did you do that, or when did you –?

MASSON: In Toronto, about 1975.

MALCOLM: Um-hmm. Was that to épater the Toronto Institute or –?

MASSON: No, I just liked it. I just don't –

MALCOLM: Yeah.

MASSON: You know, it was sort of part of analysis: a return to the roots, and your family tradition and so on. Uh, but then I agreed with her that it wasn't her name after all, so we changed it to my middle name.

MALCOLM: Okay. And that's, that will be the name you will publish your book under?

MASSON: That's right, yeah.

* * *

Malcolm, Handwritten Notes

* * *

Jeffrey Lloyd Masson originally. Father's father was Moussaieff. His father changed it in France. Became Masson. In '75 he decided to be Moussaieff – Terri talked him out of it – So he changed it to middle name.

* * *

Malcolm, Manuscript

* * *

My father is a gems merchant who doesn't like to stay in any one place too long; we had moved all through my childhood – from Chicago where I was born, to L.A., to Arizona to Hawaii, back to L.A., so moving to South American [sic] wasn't such a big deal.

* * *

Galleys at page 26

* * *

My father is a gem merchant who doesn't like to stay in any one place too long. We had moved all through my childhood – from Chicago, where I was born, to L.A. to Arizona to Hawaii and back to L.A. – so moving to South America wasn't such a big deal.

His father had been a Bessarabian gem merchant, named Moussaieff, who had gone to Paris in the twenties and adopted the name Masson. "My parents named me Jeffrey Lloyd Masson, but in 1975 I decided to change my

middle name to Moussaieff – it sounded better," he said. (Handwritten in margin)

* * *

Malcolm Deposition at 212:2-22

* * *

Q Right. It it your testimony that somewhere else int [sic] the tapes we are going to hear the statement by Mr. Masson that –

A No.

Q "I changed my name to Moussaieff. It sounded better"?

A No.

Q Would you agree, Mrs. Malcolm, Mr. Masson never said that to you?

MR. KENADY: That is a slightly different question, but answer it if you can.

A I wouldn't agree.

Q It is your testimony, then, at some point in time Mr. Masson said to you, "I changed my name to Moussaieff. It sounded better"?

A. My recollection is that he said – well, my recollection is very much refreshed by what I read here, but that

he said that he changed his name from Lloyd to Moussaieff because he liked it better or it sounded better, or something like that. I don't make the distinction between it sounded better and I liked it better.

* * *

Malcolm Deposition at 214:5-16

* * *

A You are asking me why he liked Moussaieff better than Lloyd?

Q Yes.

A He didn't say exactly why he liked it better than Lloyd, but he said he liked it because it reminded him of his ethnic roots.

Q It identified him with his heritage, didn't it? Isn't that what he said to you?

A I believe it was something like that, yes.

Q Do you equate that with the statement, "It sounds better"?

A Sure.

* * *

Review

(Huntsville Times Review, January 7, 1984)

SIGMUND FREUD:

Did he Kill the Psychoanalysis
That Made Him World Famous?

By John R. Turner

Two issues of *The New Yorker* contain two long articles by Janet Malcolm titled "The Annals of Scholarship," which give readers a peak [sic] inside the arcane world of psychoanalysis. The story they tell of a wild-eyed scholar named Jeffrey Moussaieff Masson (the middle name is sort of a fake) is fascinating for itself, but the inferences they permit about the character of exalted in-groups are even more enthralling.

* * *

In the Freud Archives at pages 37-38

* * *

"Then I met a rather attractive older graduate student, and I had an affair with her. One day, she took me to some art event, and she was sorry afterward. She said, 'Well, it's very nice sleeping with you in your room, but you're the kind of person who should never leave the room – you're just a social embarrassment anywhere else, though you do fine in your own room.' And, you know, in their way, if not in so many words, Eissler and Anna Freud told me the same thing. They liked me well enough 'in my own room.' They loved to hear from me what creeps and dolts analysts are. I was like an intellectual gigolo – you get your pleasure from him, but you don't take him out in public. Do you know what Anna Freud once said to me? She said, 'If my father were alive today, he would not become an analyst.' I swear, those were her words. No, wait. This is important. I said that to *her*. I said, 'Miss Freud, I have the feeling that if your father were alive today he would not become an analyst,' and she said, 'You are right.' "

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Tape 7 – Side A at 5:5-25

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MASSON: Right, just before, yeah. And, and that's one of the reasons I moved, I was just, you know, I was just really shocked by this and I didn't know what to

make of it and, I mean I knew, and then I met Wendy and she was even worse, and I thought: Well, at least she's a woman, you know. [laughs] I remember once trying to touch her and she looked at me and she said, "I don't think you're man enough to have an affair with me, young man." And err, you know, sort of trembled and I don't know, I just met this everywhere I went, and then I met this Thornton Wilder's niece, who's a rather attractive older woman, graduate –

MALCOLM: I, oh, no, no, no. I met his sister.

MASSON: Ah ha. And she was rather sexy and I had an affair with her and she once took me to some event, art event, and she was very sorry, and she said, "Well, you know, it's nice sleeping with you in your room but you're the kind of person who should never leave the room." [laughs]

MALCOLM: [laughs]

MASSON: "You're just a social embarrassment anywhere else, but you do fine in your own room." And that, I mean, there was a lot of that at Harvard, you know, there really was.

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Tape 7 – Side A at 14:18-15:28

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MASSON: And I don't think for one minute he's forgotten. I mean, he knows it. He, he's just terribly embarrassed. He doesn't want in any way to be associated with, I guess, you know, for an analyst, it could be dangerous, possibly –

MALCOLM: Yeah, well, you know, you said something which I was just reminded of when you were talking, when you quoted that girl who said she liked sleeping with you but she didn't want to have anything else to do with you, when you said something about how the analysts thought you were, uh, that you were this private asset but a public liability.

MASSON: Yes, yeah, that's true, yeah.

MALCOLM: So, there was that kind of double standard, like between team-mates, you know, you can [???] horse around together in the privacy of your own home but –

MASSON: Janet, can you hold on one-half second. I'm blocking someone's driveway. I must have misparked.

MALCOLM: Sure.

MASSON: It'll just take me a sec.

MALCOLM: Okay.

MASSON: Okay? Or do you want to call right back?

MALCOLM: Uh, I'll hold on. That's okay.

MASSON: Okay, just one sec.

MALCOLM: Sure.

MASSON: Hi. Uh, I guess, you know it's a little bit like the business world or the social world. I mean, it wasn't, it wasn't a scientific world, you know? I don't think think [sic] that people in the sciences would have this same kind of problem, do you?

MALCOLM: I don't, I don't know about the sciences. I mean, one, one, it's probably in every organization world [???] some kind of double standard [???].

MASSON: Yeah, but that, it would be so intimately connected to what you do. I mean, I think if you were a [sic] embarrassment socially, it wouldn't effect your standing as a physicist but I think here, well, it's, it's hard to get one's finger on it, but I think that with something, I mean I think that there really is this thing, I mean, I was just thinking the other day, the very fact that they would call Freud, all these people, still today, The Professor.

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Tape 6 – Side B at 48:7-27

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MASSON: And they complained. Eissler said, "You went to see Bleuler, a European professor of psychiatry, wearing a t-shirt and blue jeans, ahh, does that show judgment, gentlemen?" You see, Bleuler –

MALCOLM: At this meeting he said that?

MASSON: Yeah yeah, "And what was the result?" And I said, I was so pleased because I had a trump card, "The result, Dr. Eissler, is right here in a letter from Bleuler saying he's giving me the letters. Ya."

MALCOLM: [laughs]

MASSON: "Well, that's interesting. Well, you charm everybody. Yes, you charm everybody, it's true. I never said it's not true. You are a charmer. You can charm anybody. You charmed me. You charmed everybody. You

charmed Anna Freud." But with a slight hint that this was a psychopathic quality. I had the charm of the impostor sort of, I mean everybody was thinking: Ah ha, you know, the classic paper of Abraham on the impostor. It's a real Felix Krull character, that's what I was. I had managed to worm my way into the graces of Eissler and Anna Freud and Muriel Gardiner through charm and this had worked on them, and they had like fallen into a spell. I had mesmerized them, and then taken away all these valuable letters and rushed off and published them, to damage and destroy psychoanalysis out of some kind of oedipal or unresolved struggle with my father, cheap.

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Tape 1 at 36:23-37:13

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MASSON: The rumor has gone around that I seduced Anna Freud. Literally.

MALCOLM: Really?

MASSON: Yeah, literally, and that's why – she's eighty-seven – I mean, if you look at her nobody has ever seduced Anna Freud, believe me. But, I mean, it's natural, you know, and they'd all say, "Oh, Masson, he's the darling of the International." Originally in Toronto, and then, "Oh, now he's become the darling of Anna Freud and Eissler." And it's true, but it's only true in so far as, I mean, I am exactly as I am with you, and they like that, and even Anna Freud, she complained endlessly to Muriel Gardiner. She said, "You don't know what it's like having Masson in my house. It's like my dog." She has these, you know, she inherited these dogs from her father,

these Chows, and they're totally unmanageable. She adores them. They race around the garden, they tear up everything, they get into everything. She said, "Masson is just like, uh, uh, Sophie." I think her name was. And I was supposed to inherit them. She asked me if I'd take the dog. She adored him. Lovely dog. But he gets into everything. He's irrepressible.

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Tape 1 at 38:25-39:11

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MASSON: And I suppose the question is "why?" Who would Eissler – somebody in France said, *"Monsieur Masson, si vous etes un lapin,"* – "if you're a rabbit" – *"on n'invite pas un renard,"* – "one doesn't invite a fox." "Now you are a fox. And the analysts are rabbits. Why did they invite you down into their lair?" And it's a good question. I mean, it's not [???] He told me. "You don't know the number of phone calls I would get. Masson, every time you would go anywhere on a trip, I would get an urgent telegram, an urgent phone call: "Leash your maniac Masson. Please. You know, you don't know what you've unleashed on the analytic world. You're sending this man around. He's going through everybody's papers. He's coming up with all kinds of things. He's talking about it. He's irrepressible. This is not good for analysis." And Eissler was adamant. He said, "Nobody will tell me what to do."

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Tape 12 at 25

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MASSON: I can remember, eh, sitting at a dinner party with various so-called important analysts. Well, they are important if you, you know, within that hierarchy here. Various of the training analysts here. And I desperately wanted to be recognized as somebody to be taken into account; this was before anything had happened. And I kept waiting for the phone to ring and somebody important – And sure enough, the phone rang during one of these dinners, and we had a, a, a maid at the time, and she said, "There's a certain Dr. Eissler on the telephone." And everybody looked at one another, and I was so pleased –

STAAL: Yeah, of course.

MASSON: – I could have fainted on the spot.

CAMMELL: Eh-hah.

MASSON: And I said, "Tell him I'm having dinner, I'll call him later." And I would have, sort of clapped my hands with glee. Now that is a totally childish, adolescent reaction.

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Tape 1 – Side B at 46:7-16

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MASSON: Anna Freud told me, "If my father were alive today he wouldn't become an analyst." I swear, those were her exact words. No. Well, this is important. Cause I, I said that to her. I said, "I have, Miss

Freud, I have the feeling that if your father were alive today, he would not become an analyst." And she said, "You are right." And she would never, ever say that in public. And, in effect, when I said that I was fired. Is that right? If she really believes it, and if it's really true, why should one, why should one not be able to say it?

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Tape 5 – Side A and Side B at 32:17-35:20

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Then I met these people, Calef and Weinshel here in San Francisco, and the chemistry started. I thought: Ha, here it is; this is what it's like, and then really it slowly started that I did become taken over by a number of powerful members of the international analytic community. In many people's eyes, very unfairly, not based on objective qualities but based on a certain kind of psychopathic personality charm.

MALCOLM: Who said that?

MASSON: Oh, many people. That's the current rumor: I'm a psychopath.

MALCOLM: I thought that word was out of fashion.

MASSON: Oh, no, analysts use it all the time. Whenever they want to insult anybody, they say, "He's a psychopath." That would has been used more of me, I'm sure –

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[Tape Vol. 5, Side B]

MASSON: – psychoanalysis today.

MALCOLM: But it sounds as if there were people who were, were jealous that you had, that you were young and from the outside and that –

MASSON: Well, of course. And that it was so easy for me. I mean, I've had people say to me, "I have spent my life trying to get one letter of Freud's, and you go there and Anna Freud opens up her bloody desk to you. Why? Why you, you little son-of-a-bitch? What did you do?" And I said, "Well, I don't know." In Chicago that was actually a question from the audience. One of the senior analysts said, "I just want to ask one question. Why you? Who's ever heard of you? We've never heard of you. You're not famous. You haven't written much. You're a nobody. Why should you get all these privileges and we get nothing?"

MALCOLM: How did you answer that?

MASSON: I finally said, "Because I'm smarter than you."

MALCOLM: [laughs]

MASSON: [laughs] Which is true. "And I know more, too, and I've got more guts and I asked. And I mean, there are all kinds of reasons, and I'm actually very good at what I do," and so on and so forth. Now, I don't know if that's true. I don't really know. I, I suppose the real anser [sic] is because Eissler adored me, and Eissler was all-powerful with Anna Freud, and once Anna Freud liked me as well, there was nothing to stop me.

MALCOLM: Well, Eissler probably wouldn't have liked you if you didn't have real capabilities and –

MASSON: More than that. I must answer, I mean, this is in a way a cheap interpretation and lots of people have made it, but I think it's probably true. In some sense I must answer some need in him to do precisely what I am doing, that he would himself never do. He himself must have want – He always said, "You were the man I wanted to be. You know, also, you were the son I never had. But really you, you were the kind of person I would have liked to be." . . .

MASSON: I was the bad boy he always wanted to be, and not only that, I was successful at it, and I had a certain charm and I was not an imposter. I mean, everybody's fascinated by the personality of the impostor. Well, here was somebody with those traits but who wasn't an impostor. You know, if I said: I can read German, I could do it. I said, "I'll learn German in six months." They laughed. But I went out and did it, you know, what I said. I delivered the goods. I said to Eissler, "I'll go there and I'll find a letter from Fliess." He laughed, and I come back with a letter from Fliess. Anything I said I did I would do, and he was very impressed and I'm sure he is sorry now. I'm sure he's thought about it every single day. I mean, I'll bet he's thought, you know: I didn't do the right thing. In some recess of his heart he feels it was a lack of courage. He even said to me, I'm not really sure it's true, "I finally gave in to pressure. It was just too enormous, the pressure to get rid of you, from every side, everywhere, every country, everybody who met you, with the exception of Anna Freud and Muriel Gardiner, everybody else wanted to dump you."

MALCOLM: But you feel that's not true?

MASSON: Yeah, I feel it probably is true. Yeah. Why not? Sure it's true.

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Tape 12 at 15

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MASSON: I couldn't get patients, I couldn't meet people, and I didn't know what to do. And I turned to these people who were supposed to be my friends and helpers and none of them offered anything. I mean they – nothing, literally nothing. Now I was totally available, totally free, I didn't have a practice. I wasn't doing anything, I wanted to meet people. And nobody went out of their way. They felt, in a sense, I was a private asset but a public liability. . . .

They liked me when I was alone in their living room, and I could talk and chat and tell them the truth about things and they would tell me. But that I was, in a sense, much too junior within the hierarchy of analysis, for these important training analysts to be caught dead with me.

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Tape 12 at 24

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MALCOLM: When they're in analysis, they're in this regressed state, right –

MASSON: That's right.

MALCOLM: – and they go around worshipping the older analysts, and –

MASSON: Yeah.

CAMMELL: Hmm.

MASSON: Yeah, and tell stories about them, all the time –

CAMMELL: And you did it, you, you did it.

MASSON: Suck stories. They're great suckers, and it's a question of who can suck the most.

CAMMELL: You did it too, because you did it for a while, right? You had to go through it?

MASSON: Oh God, did I go through it. I mean, I remember Shengold telling me: "Imagine my amazement, Jeff, one day the phone rings and I pick it up and I hear 'Kurt Eissler here.' I nearly fell off my chair, I nearly collapsed. Kurt Eissler calling me, Leonard Shengold, what do you make of that? I was trembling as I picked up the phone." I mean now that is an absurd notion.

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Tape 2 at 10:3-9

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MASSON: I was a very promiscuous person. Sexually. Until quite recently, I mean, all over the world. That was another thing that Eissler, Eissler knew about it and didn't mind my always bringing mistresses over to see him. And he loved it. "Ah," he said, "who are you bringing now?" But he didn't, you know, he got lots of calls, "What is this guy doing here; he's coming in with some woman?"

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Tape 12 at 12

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CAMMELL: Yeah, maybe people, maybe these people really, I don't know, you *are* charming, maybe they really –

MASSON: Fell in love? That's what somebody said about Eissler, that he was in love – that's what Furst said. Furst said to me, he said he behaved like a jilted lover.

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Tape 12 at 13

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MASSON: Well it's true that most of these people don't in fact have close friends. It's hard. And it's very hard I think to find a close friend who shares your interest and shares your point of view, and your way of looking at the world and Eissler and I, and Vic Calef and I, certainly saw the analytic world in the same way. You know, all I would have to do is mention Mahler's name and they'd both gag, or you know, one could amuse oneself for hours mentioning all the famous writers in psychoanalysis who were poor, bad, junky, and we would talk about it and why. I mean, we never had a disagreement. And if I admired anybody they would be sure to admire them.

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Tape 5 – Side B at 35:24-36:3

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MASSON: Yeah. He (Eissler) could do anything. I think in the end he just got too frightened. It's like the Sorcerer's Apprentice, you know, he had unleashed something and he couldn't stop it. What would I find next? And if he could be certain that what I found would stay with me, then that would have been fine, and I think that's where he went wrong, that's what he expected me to do. It would be family. He and I would talk about anything, but we would never go outside and talk about it.

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Tape 5 – Side B at 37:1-3

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MASSON: Yes, definitely. I saw things that he never saw, but I wasn't willing to shut up about it. If I had, everything would have been fine.

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Tape 20 – Side A at 7:4-8:19

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MALCOLM: –that maybe it would be good to play it out with, with a, with a woman analyst.

MASSON: Oh, I agree –

MALCOLM: And in the –

MASSON: But it would have been, but I don't –

MALCOLM: – way, to fall in love with your analyst as one does with the one of the opposite sex –

MASSON: Right.

MALCOLM: – and then see what happens.

MASSON: Oh but it would have been absolutely devastating for me, I mean, I would have put such effort into seducing her that –

MALCOLM: Yes, you would have, but if she was, if she was good, she would not have gone to bed with you and that might have been something that you would have found something interesting in, no?

MASSON: Yeah, but imagine the tremendous disappointment there if she had. [laughs] I mean in a way, you see, I seduced Schiffer. I didn't: it didn't happen sexually, but –

MALCOLM: Yeah.

MASSON: – it happened emotionally.

MALCOLM: Yeah, yeah.

MASSON: And that was a great disappointment to me. I mean when he calls me now, it just saddens me, you know? When I feel these attempts on his part to get close to me and to use me, and the reason it's so sad is 'cause I realize that, you know, he, he's hungry ultimately. He really wants something from me and that part of the pact of an analysis is you don't want anything from the patient.

MALCOLM: That's right. There should be that – like Zen desirelessness, right?

MASSON: That's right, I mean, it is a sort of monkish kind of thing which is another good reason why I shouldn't do it, you know? I don't like monks. Uh, I also don't believe in them. I don't believe that anybody is a successful monk.

MALCOLM: But you should probably meet somebody you can't seduce, no? In –

MASSON: That, that would be nice. [laughs]

MALCOLM: [laughs] It would probably be a very interesting experience for you.

MASSON: I'm sure it would be.

MALCOLM: But you feel very pessimistic about that, right?

MASSON: Yes.

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Tape 20 – Side B at 48:26-50:10

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MASSON: And then when I said, "Well, but after all I did get them," he said, "Yeah, because you can charm anybody."

MALCOLM: Yeah, I see. Okay. So –

MASSON: But you see, I mean, on the other, on the other hand, Eissler in this letter that I read you is complaining that everybody, literally just about everybody that ever met me complained.

MALCOLM: And is that true?

MASSON: Yeah, I suspect it is true. But you must remember who these are. These are ali the analysts. And he said, "The exceptions were Muriel Gardiner and Anna Freud," and that's it really.

MALCOLM: Those, those were the three, yeah.

MASSON: Yeah.

MALCOLM: You, your three, three protectors.

MASSON: And people – He excused people like Parin, who were communists, or anybody left-wing. But any normal conventional person was not happy to meet me. And he felt, uh, that I was therefore bringing disgrace on the Archives. And I think he got a lot of this. I think that every time I went to a meeting, people would call Eissler.

MALCOLM: Yeah, yeah.

MASSON: And I think that they were often just puzzled. You know how is it –? Now he did get something of the other side. Uh, and I finally said to him "Well, are these people you respect?" And he said, "No."

MALCOLM: Um-hmm.

MASSON: And I said, "Well then, you should be pleased." He said, "Yes, that's a point. That's a good point."

MALCOLM: Um-hmm.

MASSON: He was very pleased. He said, "Yes, yes, you're right. I should keep that in mind."

MALCOLM: [laughs]

MASSON: And it's true. He would call me up and he'd say. "You know what so-and-so said about you? He says that you're dishonest." And I said, "Well, is so-and-so reliable?" "No, of course not." I said, "So what do you care?" [laughs]

MALCOLM: He's, he's a very artless man in some ways, isn't he?

MASSON: Yeah, he is. I mean he's, like he's very easily taken in.

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Tape 5 – Side B at 36:13-25

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MASSON: Every analyst loves, I mean, you know, the way to get one-up is to use the word "Anna." Nobody calls her Anna, but everybody pretends to. [laughs]

MALCOLM: [laughs]

MASSON: "When I was with Anna," and they were not, of course, I mean, that's that's one-upmanship, to to [sic] say, "I know Kurt Eissler. Kurt and I were talking the other day and he told me – " That kind of thing. They love it. Analysts are the worst name droppers in the world. And ultimately the whole idea is to get close to Freud and to get close to some documents, so it was a very traumatic experience for American analysts to see this young guy running around with thousands of letters sticking out of every pocket.

———

Malcolm, Handwritten Notes

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Then I met Thornton Wilder's niece, who was a rather attractive older woman graduate student. And she was rather sexy and I had an affair with her . . . She once took me to some event, an art event, and she was very sorry. And she said, well it's nice sleeping with you in your room, but you're the kind of person who should never leave the room – you're just a social embarrassment anywhere else, but you do fine in your own room.

• • •

Malcolm, Typewritten Notes

Jeff, visit.

He sees E's book on Tausk the world of the paranoid.

You watch when this book hits the best seller list, the analysts will crawl back. They move whichever way the wind blows. They will want me back, they will say Masson is a great scholar, a major analyst, after Freud he's the greatest analyst who ever lived. Suddenly they will be calling, begging, cajoling, please take back what you've said about the profession, our patients are quitting. When I was fired the Los Angeles, San Diego, and Detroit institutes cancelled my appearances to read papers. Believe me, when the book reaches the best seller list, they [sic] say Masson was always our choice for being the major speaker. The dum dums will say its [sic] crazy. But there are not that many of them. They will try a short

smear campaign, then they'll try to buy me, ulimately [sic] they will have to shut up. Judgement [sic] will be passed by history. There is no refutation of this book possible.

It's going to cause a revolution in psychoanalysis. There is not a patient in analysis who will not come holding the book in his bhand [sic] and say, why didn't you tell me this? What the hell is going on? We want an explanation. This man is telling me that there is something profoundly wrong at the core of the proffession [sic]. There is something wrong at the core.

He sees F/fl. letters as a big cover-up.

It was the Prague spring (me, Eissler and AF) and suddenly the Russian tanks moved in. Anna F. was sort of in love with me. She was taken with me. "Isn't it true that I didn't leave out anything important?"

> Every time I went to her house I found more evidence of Freud's dishonesty. He thinks she communicated with E. (re firing)

Jeff, visit 2

re Swales:

AF said not to send Swales F/Fl letters. Or there would be no project. She didn't give Shur permission.

Jeff sent tick [sic] out of his own money for Swales to come to Berkeley. Swales ranted on telephone about paper. it's [sic] the worst paper I've ever read. It's stupid, dishonest. Jeff said, then we shouldn't see each other. Swales was very nasty on the telephone.

He didn't return money.

Swales threatened suit. ????

E called and said he was upset by Jeff's behavior, reproached him for offering to show Swales letters. E, strictly speaking, was correct. E said it was *my* place to give permission. It's still a murky area. I'll be more careful in the future, I told E. But you, Dr. E., you sent him to me. (not true!) (see correspondence) E said, you've put me in such an embarrassing position. He hinted that he might fire me. (E told me, he should have then.) Then he apologized.

I think they were waiting for an opportunity to legitimaely [sic] fire me. I had close to seven million dollars worth of letters. If I was dishonest she wouldn't have done it. I was being given the whole psychoanalytical legacy (by Muriel, E, and AF) and all I had to do was continue being honest and forthright and courageous. It was irresistable [sic], and there were no ambiguities. It all meshed. No one could ave [sic] been happier than AF, E, Mg [sic] and me. It was the prague [sic] spring.

It's not something that can be payed [sic] back with money. MG said, I don't blame you.

Jeff visit, 3

If he had become secretary, he would have had the title Director. he [sic] would have made everything available in the year 2,0000 [sic]. at L of C.

The archives would have been in Calif. Then when AF died he would have moved to London immediately. Within 24 hours ship all stuff in the house to L of C.

They didn't suddenly discover something about me they didn't know.

I wouldn't have written the book as the director of the museum.

Eric Ericison [sic]: corrupt narcissit [sic].

That was one of my problems, I didn't like anybody. Lipton, Bernfeld. a [sic] few others. Eissler liked that about me. There was little he liked too. Ididn't [sic] even like my own writings. He and E would stay up all night talking about what writings they didn't like. It was transference love. It was a folie a trois – me and Af [sic] and E. I was a fantasy of AF's. She liked to hear that analysts are such creeps, dolts, etc. I was giving her a good time. I was like an intellectual gigolo. You get your pleasure from him. I was like a very expensive cat – an elegant cat – that was dangerous to let out of the house.

Maresfield G would have been a centre [sic] of scholarship, but it also would have been a place of center of [sic] sex, women, fun. It would have been like the change, in the wizare [sic] of oz, from black and white into color.

Jeff/talk during visit

Shiffer said to him, "I am not going to be dreamed about like that." He stayed up all night reading E's book on tausk [sic]. feels [sic] it is about himself. Is outraged by it. He see [sic] it as the world of the paranoid.

You watch when this book (jeff's) [sic] hits the best seller list, the analysts will crawl back. They move whichever way the wind blows. They will want him back. They'll say, Masson's a great scholar

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Malcolm Deposition at 233:20-235:20

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Q Mrs. Malcolm, showing you Malcolm Exhibit No. 16 for identification, can you identify what that document is?

A It is a typewritten series of pages of notes that I took while Jeff was speaking with me in my house in the spring of '83.

Q The interview that involved the sleeping with the graduate student, that took place while you were out in Berkeley; is that correct?

A Correct.

Q When you say the spring of '83, when are you talking about, what month?

A It doesn't say here, so I don't know. Maybe Jeff would remember which month he was in New York.

Q I'm just asking you what month.

MR. KENADY: Which month in the spring of '83?

THE WITNESS: April, May, something like that.

Q Did you write all four pages at the same time?

A I don't remember.

Q Tell us what you recall as to how you prepared those four pages.

A What I recall – you mean – okay. I recall sitting at a table with Jeff and scribbling on sheets of paper things that he said.

Q Was there anyone else present when you were doing this?

A No.

Q Then what did you do with those scribbles?

A Those I have lost.

Q Are you telling us, then, that you took those scribbles and then you converted those into a typewritten page?

A Correct.

Q When did you convert them into a typewritten page?

A Shortly thereafter, shortly after the visit.

Q Did you write all four pages at the same time?

A That I just don't remember, but I know I typed this thing at the same time, maybe at the end of April or beginning of May of '83.

Q Exhibit No. 16 has four pages to it?

A Yes.

Q Did you type all four pages at the same time?

A I typed them at the same time, yes.

Q Did you have more than one scrap of paper with scribbling on it?

A I had more than one scrap; I had several scraps.

Q You threw all of those away?

A Yes.

* * *

Malcolm Deposition at 254:19-255:25

* * *

Q Is it your recollection that all Mr. Masson told you was that he was giving Anna Freud a good time?

A Well, if you are asking me about my recollection, then my recollection is that Mr. Masson told me on a great many occasions that both Eissler and Anna Freud were getting a lot of pleasure from being with him.

Q Then you wrote, "I was like an intellectual gigolo." Is it your testimony that is the statement that Mr. Masson made to you in April or May of 1983 in your home?

A Yes.

Q Was anyone else present when that statement was allegedly made?

A No.

Q What did you understand the term "intellectual gigolo" to mean?

A It had to do with giving them pleasure.

Q Is that your understanding of the term?

A I know what the word "gigolo" means.

Q What is your understanding of the word "gigolo"?

A I believe it is – there is a younger person who is having a sexual relationship with an older person.

Q It is basically a form of prostitution, isn't it?

A Yes, I guess; you could call it that. I guess it is sort of selling your sexual favors, something like that. It has a sexual connotation, yes.

Q You decided to put that after the statement by Mr. Masson of a sexual encounter he had had; is that right?

A Right.

Q You felt that fairly represented what Mr. Masson was saying; is that correct?

A I did.

* * *

Malcolm Deposition at 266:2-12

* * *

A Well, I have to say here that I never said Mr. Masson was an intellectual gigolo.

Q I didn't say you said it. I said that supported the quote.

A I can only say that he said the same thing other times.

Q I thought you told me that he only used the words intellectual gigolo one time?

A That's correct. I only remember him saying it here, but I remember other conversations where the substance of what he was saying was the same.

* * *

Malcolm Deposition at 268:3-9

* * *

Q Are you saying those are the statements from which you concluded that Mr. Masson was saying to you that he was an intellectual gigolo for Dr. Eissler?

A I didn't conclude he said it. He did say it.

Q On this one occasion?

A He used that one word on that one occasion, but he used the sense of it many times.

* * *

Malcolm Deposition at 273:4-12

* * *

A It refers to the relationship between him and Dr. Eissler. You raised the question about whether I was referring to Dr. Eissler, as well as to Anna Freud. I am showing you references to Dr. Eissler as this kind of friend of Mr. Masson's, according to his account.

Q Do you regard anything on that page as being a statement by Mr. Masson that is substantially similar to the alleged statement by him that he was an intellectual gigolo?

A It is on that subject, yes.

* * *

Malcolm Deposition at 276:2-277:24

* * *

Q Let's go to the substantially similar statements regarding intellectual gigolo. Are you aware of anything other than what you have pointed out to us on Exhibit No. 7.5?

A There, too, I felt throughout my long interview with Mr. Masson there were many references to his relationship with Anna Freud and Dr. Eissler as people who got an enormous amount of pleasure from being with him and a relationship that this term seemed to characterize.

Q Are you saying now that when Mr. Masson would tell you about his relationship with either Dr. Eissler or Anna Freud that you interpreted it as being – as his being an intellectual gigolo?

A I would say that when he actually used that term it connected very well with all of the other things he had said about the relationship and that it was a good summary of what he had told me before about what their relationship had been like.

Q What you are saying to us, then, is that you then interpreted all of his previous statements as being characteristic of an intellectual gigolo; is that correct?

A That is not right.

Q Did Mr. Masson ever use any language to you other than what you have written down on Exhibit No. 16, wherein he said something similar or your words were substantially similar?

A No. I never would use that expression. I would say that they were substantially true, but substantially similar does not make much sense to me.

Q Forgive me. Those are the quotes that I have written down. I have been wrong in my life. The term "intellectual gigolo" you said was said only one time.

A Correct.

Q You say that Mr. Masson on other occasions used language that you equated with "intellectual gigolo"; is that right?

A Sure.

Q Can you point to us any language of Mr. Masson's that you say is the equivalent of saying "intellectual gigolo"?

A Again, I don't want to waste our time in looking through here, but I have a very clear recollection – recollection of previous conversations about what his relationship with Anna Freud and Eissler had been like when he was in favor with them.

Q Would those be on tape?

A Some of them, I believe, are on tape.

• • •

***In The Freud Archives* at page 149**

• • •

I think Freud was a great and remarkable thinker, but *he wasn't honest*. He was a man who just lost his courage. His entire theory after he abandoned seduction was the product of moral cowardice, because Freud knew that Schreber was in an asylum where they were trying to castrate him, and he never mentions it.

• • •

Tape 2 – Side B at 48:3-28

• • •

MALCOLM: So you've developed a very ambivalent view toward Freud, haven't you?

MASSON: Uh huh! It's more than ambivalent. I think he was a great and remarkable thinker but he was still a, a, a man who just lost his courage.

MALCOLM: Um-hmm.

MASSON: He was a brilliant mind who didn't have the courage to stick with things that he knew were true. I mean, just look at that Schreber thing! He must have known it. When he came to write that, he did not say so. Why? Cause he didn't want to insult a famous psychiatrist like Flechsig. And because he knew it wouldn't be good for his theories. I mean that's all supposition. But I mean, something happened.

MALCOLM: Yeah.

MASSON: It's not honest in the end. You don't write – And it was the first piece ever written on the psychology of homosexuality, the first attempt to unravel the mystery of homosexuality by Freud. It's a brilliant and convincing thesis. And it's dishonest. Cause [sic] he knew that the man was in an asylum where they were trying to castrate him! And he doesn't mention that. Now what, what would you say about somebody like that?

MALCOLM: Yeah.

MASSON: No matter how brilliant they are, how good a thinker, they are not being honest if they omit that fact from their essay. Suppose you had a student who had done that. What would you tell them?

• • •

Tape 17 – Side A at 6:18-21

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MASSON: They wanted something from somebody else and they were simply using her. And Freud didn't have the balls really, that's what it comes down to, to say to her, "You're aboslutely [sic] right."

• • •

Tape 17 – Side A at 9:1-3

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MASSON: – nobody sees Freud as having totally caved in. And I think the tragedy is that he not only caved in there but he caved in everywhere.

• • •

Tape 17 – Side A at 15:24-26

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And he, he really chickened out and I think the whole of psychoanalysis just followed him.

• • •

Tape 17 – Side A at 16:12-13

• • •

MASSON: And he just didn't have th [sic] guts to stick with it.

• • •

***In the Freud Archives* at page 33-34**

"Maresfield Gardens would have been a center of scholarship, but it would also have been a place of sex, women, fun. It would have been like the change in *The Wizard of Oz*, from black-and-white into color.

"When word got around that Eissler had made me his successor, other things started to come my way. I was made a director of the Freud Copyrights. This is the group, made up of Mark Paterson, Masud Khan, Mrs. E. L. Freud, and me – I still haven't been kicked off it, for some reason – that controls the copyright of Freud's writings. My appointment happened through Masud Khan. He's a well-known English analyst. At first, he was very suspicious of me, but when he saw the future – how I was coming in and taking over from Eissler – he wanted to be on good terms. So he invited me to his house and wrapped his arms around me and said, 'My dear boy, you must become a director of the Copyrights.' He's a very handsome man, about six feet seven. His full title is Prince Masud Khan – he's an Indian raja – and he's very fashionable. He used to be married to a Russian prima ballerina. And he's generous – he gave me books and a big picture of himself at our first meeting – and very articulate. He says what he thinks. He's got class and he's fun, and we took to each other right away . . . "

• • •

Malcolm's Typewritten Notes

Maresfield G would have been a centre [sic] of scholarship, but it also would have been a place of center of [sic] sex, women, fun. It would have been like the change, in the wizare [sic] of oz, from black and white into color.

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Tape 9 – Side A at 23:3-11

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MASSON: Oh, it's a beautiful house.

MALCOLM: Yeah.

MASSON: But it's dark and somber and nothing went on in there. Boy, I was going to renovate it and open it up, and the sun would come in and there would be people and – Well, that's what it needs, but it is an incredible storehouse. I mean, the library, Freud's library alone is priceless in terms of what it contains: all his books with his annotations in them; the Schreber case annotated, that kind of thing. It's fascinating.

• • •

Tape 2 – Side A at 10:3-9

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MASSON: I was a very promiscuous person. Sexually. Until quite recently, I mean, all over the world. That was another thing that Eissler, Eissler know about it and didn't mind my always bringing mistresses over to see him. And he loved it. "Ah," he said, "who are you bringing now?" But he didn't, you know, he got lots of calls, "What is this guy doing here: he's coming in with some woman?"

• • •

Tape 9 – Side A at 17:23-18:18

• • •

MASSON: Masud Khan invited me to his house and he said, "My dear boy," putting his arms around me, "You must become Director of Copyright." I said, "Well – " He did that actually and he did it because he liked me and he liked me because I was in well with Eissler and I had, I mean, he saw, you know, the future. I was coming up and I was going to be taking over, and he wanted to be on good terms. He, you know, is very political that way. Gave me a big picture of himself and wrapped his arms around me and gave me books. He's fun and he's

generous, a very handsome man, about six foot, seven inches, looks like a giant. Very articulate and says what he thinks and he's very fashionable. He's married to a prima ballerina, a Russian woman and –

MALCOLM: Makharova.

MASSON: Yes. He's married to her and he's got lots of, he's got class, you know. And he's fun. I like him. So, and we got on very well. That was the first time we ever met and you know, it was buddy-buddy, and we were to stay with each other and [laughs] we were going to pass women on to each other, and we were going to have a great time together when I lived in the Freud house. We'd have great parties there and we were [laughs] –

MALCOLM: [laughs]

MASSON: – going to really, we were going to live it up.

• • •

Tape 13 – Side A at 27:7-21

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MALCOLM: Well, you commented that you slept with a thousand women. I was nearly reminded of that scene in *Don Giovanni*, you know, the Leporello – and Bob –

MASSON: Yeah.

MALCOLM: – I talked to him yesterday. I forget what the context was, but he also used that number –

MASSON: Yeah.

MALCOLM: – of all these women that you've slept with, and I thought, I mean, "Did you really count?"

MASSON: No, but I, I once figured it out in terms of you know, I slept with so many women per week for so many years –

MALCOLM: That, that's a very large number.

MASSON: Close to a thousand, yeah. I mean that's accurate. It is around that. I'll say between seven hundred and thirteen hundred, something like that.

• • •

Tape 5 – Side A at 2:7-3:25

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MALCOLM: Now, how did that begin? How did you first become interested in analysis?

MASSON: Well, I was very neurotic myself and I, my main symptom was total promiscuity, sleeping with every woman I could meet.

MALCOLM: This was as an adolescent or –?

MASSON: As an adolescent. At Harvard. And I went to see –

MALCOLM: You were an undergraduate and graduate student at Harvard?

MASSON: Yeah. And I went to see Erik, Erik Erikson, and asked if I could go into treatment with him, and he said, "No," but he knew somebody very, that he had great respect for, and I went to see this person who was an analyst and I went into therapy. Then I left for

India and then I still had the same problems, so when I got to Toronto, I went into therapy again, and then I decided to go back and really go into analysis five times a week to get to –

MALCOLM: But, by the problem of promiscuity, you would just fall in love with a lot of girls –?

MASSON: No, no, I didn't fall in love. I just screwed a lot of women, like, you know, a different woman, two or three women a week.

MALCOLM: You didn't care about them? You just wanted to, to have the sex?

MASSON: Yeah, I just wanted sex. Lots of it. With lots of different women. And it never seemed to get any better. And it seemed to me that that had something to do with my childhood and that I could find out something about it through analysis, that surely this was not just – I mean, I didn't say to myself: Well, you're just a lovable guy. [laughs] You know, you just love women and women love you, so it's easy. I knew there was something wrong with it, something was preventing me –

MALCOLM: You saw it as an illness?

MASSON: Yeah, I saw it as an illness.

MALCOLM: Just by yourself or did somebody kind of, you know –?

MASSON: Well, a lot of the women would help me. You now, women didn't like that. I'm, I'd sometimes get closer to a woman than just sleeping with them one night. Sometimes I'd be with them for a few weeks or a few months, but I was always looking around for other

women. And they'd say, "Hey, you know, you're sick and I'm in love with you. Why aren't you in love with me?" That kind of thing. And after a while, I realized: Well, you know, I can't say because I'm looking for the right person. I'd met, I don't know, I'd slept with close to a thousand women. I mean, it was time I – [laughs]

• • •

Tape 7 – Side A at 8:2-20

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MASSON: So I went to Harvard. I really think I would have done much better anywhere else.

MALCOLM: Yeah, yeah.

MASSON: It just wasn't for me, you know. It was an awful atmosphere. In a way, I mean it was good for scholarship.

MALCOLM: Yeah.

MASSON: You know, if you really wanted to become a scholar, by God, that's what I wanted more than anything in the world. I wanted to become a scholar. That was just my, I don't know, like some teenager who wants to be a football player.

MALCOLM: Yeah.

MASSON: I just was desperate. And I did. Uh, but it cost me a great deal doing it.

MALCOLM: Yeah, so, so you had a painful experience there?

MASSON: It was a very painful experience. I was quite miserable for a while. But there were always, I

mean, thank God, there were women and I went off to Wellesley and I met lots of women and I screwed around a lot and that helped.

• • •

Tape 7 at 20:3-12

• • •

MASSON: I mean, I've never met an analyst who wasn't dull. If you can name me one that I know, uh, I mean, as a person. I mean, even Shengold, he's dull. You know, you spend, you're not going to go off on vacation and have a great time with Len Shengold. You know, he's overweight and he's not in shape. You know, to find an analyst who [laughs] is just sort of normal and likes to do things, I mean, I couldn't imagine palling around with an analyst. You know, "Let's go pick up some women. Come on, let's –" They wouldn't do that, right?

• • •

Malcolm, Manuscript

• • •

Anna Freud was nice to her, but there was no warmth, and the house was a cheerless place. It was a beautiful house, but it was dark and sombre and dead. Nothing every went on there. I was the only person who ever came. I would have renovated it, opened it up, brought it to life. ~~Sun would have come xxxx pouring in, people would have come, there would have been parties and laughter and fun.~~ [handwritten copy for crossed out area: Maresfield Gardens would have been a center of scholarship, but it would also have been a place of sex, women,

fun. It would have been like the change in "The Wizard of Oz" from black and white into color.]

* * *

Galleys at 23

* * *

It was a beautiful house, but it was dark and sombre and dead. Nothing every went on there. I was the only person who ever come. I would have renovated it, opened it up, brought it to life. Maresfield Gardens would have been a center of scholarship, but it would also have been a place of sex, women, fun. It would have been like the change in "The Wizard of Oz", from black-and-white into color.

? on tape (Handwritten in margin)

* * *

***In the Freud Archives* at page 162**

A few days after my return to New York, Masson, in a state of elation, telephoned me to say that Farrar, Straus & Giroux had taken *The Assault on Truth*. "Wait till it reaches the best-seller list, and watch how the analysts will crawl," he crowed. "They move whichever way the wind blows. They will want me back, they will say that Masson is a great scholar, a major analyst – after Freud, he's the greatest analyst who ever lived. Suddenly they'll be calling, begging, cajoling: 'Please take back what you've said about our profession; our patients are quitting.' They'll try a short smear campaign, then they'll try to buy me, and ultimately they'll have to shut up. Judgment will be passed by history. There is no possible refutation of this book. It's going to cause a revolution in psychoanalysis. Analysis stands or falls with me now."

* * *

Malcolm's Typewritten Notes

You watch when this book hits the best-seller list, the analysts will crawl back. They move whichever way the wind blows. They will want me back, they will say Masson is a great scholar, a major analyst, after Freud he's the greatest analyst who ever lived. Suddenly they will be calling, begging, cajoling, please take back what you've said about the profession, our patients are quitting. When I was fired the Los Angeles, San Diego, and Detroit institutes cancelled my appearances to read papers. Believe me, when the book reaches the best seller list, they [sic] say Masson was always our choice for being the major speaker. The dum dums will say its crazy. But there are not that many of them. They will try a short smear

campaign, then they'll try to buy me, ulimately [sic] they will have to shut up. Judgement [sic] will be passed by history. There is no refutation of this book possible.

It's going to cause a revolution in psychoanalysis. There is not a patient in analysis who will not come holding the book in his band [sic] and say, why didn't you tell me this? What the hell is going on? We want an explanation. This man is telling me that there is something profoundly wrong at the core of the proffession [sic]. There is something wrong at the core.

• • •

Tape 7 – Side A at 22:2-25

• • •

MASSON: Yeah, but Janet, they haven't seen my book.

MALCOLM: I see.

MASSON: I assure you when that book comes out, which I honestly believe is an honest book, there is nothing, you know, mean-minded about it. It's the honest fruit of research and intellectual toil. And there is not an analyst in the country who will say a single word in favor of it.

MALCOLM: Uh huh. Yeah, but I mean they may still be friendly toward you.

MASSON: No, never. I assure you.

MALCOLM: You think Shengold will, will be unfriendly –?

MASSON: Absolutely, absolutely. They will not, I mean, they may do it very privately. Look at the fact that I was not any longer invited to anything after this.

MALCOLM: Uh huh.

MASSON: I mean, why would that be? I'm the same person, right? And even the opinions I have are identical. Everybody knew the opinions I had and as long as Eissler was behind me and Anna Freud was supporting me, I was invited everywhere.

MALCOLM: Yeah.

MASSON: And loved, even though hated in some way.

MALCOLM: Yeah.

MASSON: And now, nobody. Not a single analyst. I never have any contact now with analysts.

• • •

Tape 8 – Side B at 51:11-27

• • •

MASSON: Yeah but I've become, for better or for worse; analysis stands or falls with me now.

MALCOLM: Well that's a very grandiose thing to say.

MASSON: Yeah, but it's got nothing to do with me. It's got to do with the things I discovered.

MALCOLM: Well, whatever, that's still a [???] thing and, and I'm not there yet.

MASSON: Well, you'll see.

MALCOLM: I can't think in this global way yet. Maybe I will –

MASSON: You will.

MALCOLM: – after I've talked to a few more –

MASSON: Maybe you won't until you've written the article and see the reaction but it will, analysis is either going to face this kind of stuff that I've found, which are historical documents, and change or they're going to deny them and they're going to become [???] destroyed.

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Tape 6 – Side B at 61:4-62:18

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MALCOLM: But Melanie Klein is [???] artist.

MASSON: No, but a lot of analysts have been influenced by her. Thousands of them.

MALCOLM: Most of them in South America, no?

MASSON: Well not just that. Also in America, Los Angeles.

MALCOLM: Yeah.

MASSON: And a lot of what Kernberg – says he's been influenced by her –

MALCOLM: Yeah.

MASSON: Well he's a big influence in American psychoanalysis.

MALCOLM: Well, that's true.

MASSON: Talk to Kernberg. Boy, he won't like my position one little bit, you can be sure. He hates it with a passion. Or Mahler, or any of those people.

MALCOLM: Yeah, yeah.

MASSON: I mean, just – You're going to hear it. Talk to enough analysts and get them right down to these concrete issues and you watch how different it is from my position. It's utterly the opposite and that's finally what I realized, that I hold a position that no other analyst holds, including, alas, Freud. At first I thought: Okay, it's me and Freud against the rest of the analytic world, or me and Freud and Anna Freud and Kur [sic] Eissler and Vic Calef and Brian Bird and Sam Lipton against the rest of the world. Not so, it's me. It's me alone. Therefore, it's not for me, I mean I'm not –

MALCOLM: Well, I asked Calef [???], does he have patients who have actually really had, were really raped as children?

MASSON: Yeah.

MALCOLM: And what does he do? And he said, "Well, you know, fewer now than he did early in his practice [???] richer –

MASSON: [laughs] Yeah.

MALCOLM: And more middle class patients, which is a classic problem, and he said he certainly doesn't [???] feel sympathy.

MASSON: Yeah, yeah. Well, he's written about that, sure, yeah.

MALCOLM: But you see these people as exceptions, who will accept –

MASSON: Not only as exceptions. I don't think they draw their conclusions. Why then did he hate my paper so much? That's all the paper's about. Why would he say that?

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Tape 12 at 34

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MALCOLM: Well, Freud started it all.

MASSON: He was the first analyst.

CHILD: [???]

STAAL: See, I know, I know very little about Freud –

MASSON: Analysis was started in 1895 and –

STAAL: – and psychoanalysis. I know more –

MASSON: – it died in 1982.

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Tape 1 – Side A at 2:4-28

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MASSON: No, I'm just trying to think of what, you know, because it's been – It's new to me, in a sense, all of this, and it's all, really in the last week, I went to

Europe and suddenly it was like a bomb bursting. *Le Monde*, I never expected *Le Monde* to phone me. And *Spiegel*, I mean they all want to do all of this. And I'm trying to figure out what it is, whether it's – I, I have a feeling there is a real groundswell beginning about the whole of therapy, psychoanalysis, psychiatry, that there's something profoundly wrong and that people sense this and they want something they can, "Ah-hah, here is what it is."

MALCOLM: Um-hmm.

MASSON: So I feel that, you know, my story, I mean it's hard to avoid it. Even at this famous witch trial with the thirteen [laughs] judges and myself, the whole question of Ferenczi came up. And they said, you know, this, "We can't help thinking of Ferenczi; this is what happened to Ferenczi at the end, too. He was paranoid." And I said, "Yes, but look, A: I'm not paranoid, B: Unlike Ferenczi, I'm not sick. I'm not old, I'm not tired, I'm young, I'm a good fighter. If you people want a fight you're going to get one. There're thirteen of you and one of me, that's just about the right odds. Considering how firghtened [sic] all of you are." And I pointed out to them that they had been terrified. Every time Eissler said even the most absurd thing, they would all agree with it.

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Tape 5 at 57:2-6

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MASSON: And I've got to soon sit down and, you know, work ten hours a day on my book because it's everything, everything hangs on that book. I have a

French contract, an Italian and a German. Hopefully, Harvard is going to take the book now and give me some money. If they don't, Farrar, Straus.

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Tape 12 at 30-31

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STAAL: You know what Schopenhauer said, the difference between being young and being old? When you're young, and the telephone rings, you, but he really said it well, *Da Kommt es*, "Now it is coming." And then you are old and the telephone rings, and you say, *da kommt's*, "There it is."

MASSON: That happened even today. I mean, there is a sort of – The phone rang while Denise was there, and I said, "There's my future."

MALCOLM: Uh-huh.

MASSON: And, uh, it was long distance from New York, and he says –

STAAL: Denise your [sic] young [???].

MASSON: – [???] from Farrar Strauss, and, uh, we received your manuscript, we're very interested, we want to publish the book. And I got that certain, heart going, you know?

CAMMELL: But even –

MASSON: And, yeah, when you called –

CAMMELL: – when you –

MASSON: – when you called.

CAMMELL: It was so bizarre, he'd come back from, from um, France the night before and the phone rang and he said, he said something it was just incredible, I mean it was incredible, and there you were on the phone. Really amazing.

MASSON: And I, it's too good, I swear, I had had –

CAMMELL: [Simultaneously] Two calls like that, he said, today, "There's my future," and it was this person –

MASSON: I had the fantasy –

CAMMELL: – with money.

MASSON: – when I was in France, I was mad, when I had an interview with *Le Monde*, which is very prestigious in France, and it will come out on Sunday, "Well, that's fine but it doesn't do me any good, I'm, I'm not there. I wonder why somebody like Janet Malcolm from *The New Yorker* doesn't phone me?"

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Tape 1 – Side B at 39:13-39:20

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These were my three friends. Anna Freud, Muriel Gardiner and Kurt Eissler. Everybody else, like Wallerstein, hated me. Would have done anything to get rid of me. [???] Envious, and you know, they genuinely felt I was a mistake and a nuisance. And a potential danger to psychoanalysis, a really critical danger. They sensed that. And they were right. "This man could single-handedly bring down the whole business."

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Tape 5 – Side B at 58:4-14

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MASSON: Yeah, so I don't have a publisher, and my feeling is if I don't get one, fuck them. I'll let the book come out in Europe and they'll be sorry, you know, it'll create all this storm and a lot of attention, and then they'll come to me and say, "Well, we'll pay you this, that and the other," and then I can pick and choose. At present, if I got ten thousand dollars in advance, I'd be happy. And Arthur fold [sic] me on the phone, "That's chicken feed. Is that all Farrar, Straus is offering you?" I said, "No, they haven't even offered. They just suggested the possibility of ten thousand dollars." He said, "Chicken feed!"

* * *

In the Freud Archives **at page 14**

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"And when my book comes out there is not a patient in analysis who will not go to his analyst with the book in hand and say, 'Why didn't you tell me this? What the hell is going on? I want an explanation. This man is telling me that there is something profoundly wrong at the core of psychoanalysis. Jesus Christ! If this is really true, what am I doing here?' When I was fired from the Archives, Alice Miller, who shares my ideas and therefore can no

longer call herself a Freudian analyst either, was the only person who had the guts to come out for me."

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Tape 21 – Side A at 19:16-27

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MASSON: Uh, and when these, this book comes out, it's, uh, I mean I really feel it spells the beginning of the end of psychoanalysis, and he's definitely going to blame me, as will every other analyst in the world for having done psychoanalysis an irreparable damage. But what they'll say beyond that is still a puzzle to me, how they're going to reinterpret the documents I've found so that it, on the contrary, uh, enhances Freud's image is totally mysterious to me.

MALCOLM: Um-hmm, um-hmm.

MASSON: Undoubtedly they will try that. But I don't think they're going to fool the whole public you know. I think that this book really is, uh, it's the end for them.

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Tape 8 – Side A and Side B at 32:11-34:16

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MASSON: But all those things happen. They happen to lots of patients who are in analysis, and most analysts, all analysts, will by and large say, "It doesn't

matter what happened. All that matters is what the patient feels about what happened," and that is not true. And the reason they say it is because Freud said so and what I'm showing in all my work is that Freud said so for reasons that are not honest, and that's why analysts are so upset by it. Because if I am right, and it's ery [sic] hard to prove that I am not, then they've got to say, "My God, what the hell have I been doing all these years to my patients?" And that's, that's the essence of this business. It's scary for analysts and I assure you that every analyst you talk to is going to be scared. They're not happy. And I don't think it's going to go away. I really don't. I don't think that this whole controversy is just going to disappear.

MALCOLM: No.

MASSON: But, that's what they'd like to say. "This is just another upstart, you know, Masson, like many people, feels that he knows more than Freud. It will cause a stir in the press because of this article in *The New Yorker* for a week or two and then it will die down and then we'll continue in our profession as we always have, searching for the truth." That's not true. It's not going to die down. It's not going to go away, and the reason it's not is because these things are written by Freud, not by me. Freud wrote these letters, I didn't. I just found them and patients are going to say, "What the hell is going on here?" They're already say [sic] it. I know it. I've heard it from analysts close to The American Psycho-Analytic. The office was swamped when all these articles came out.

MALCOLM: Yeah.

MASSON: With people calling saying, "What the hell is going on in analysis? What secrets are you guys keeping?"

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[Tape Vol. 8, Side B]

MASSON: "What secrets are being kept from us? What is going on in analysis?: Patients are asking that. "What, what, what is this about Masson? I mean, is this not true? Tell me why? They're asking those questions and they're worried, and I don't blame them. I would be. If I had been a patient and somebody else had come along with all this information, I would have called him already and said, "Hey, wait a minute. This really effects [sic] me. I'm in analysis. I want to know. How are people responding to this? What's the analytic answer to this? Are they assimilating it? Are they taking it seriously? What are they doing about it?" I'd have been very worried and I think patients will be very worried and they will be worried for a long time to come. And they, the practice is going to diminish. People are going to stop going. I know it.

MALCOLM: Well, people are going to stop going when they stop having problems, and as long as people have problems they're going to go to some kind of therapist or another –

MASSON: Well, that's the problem. They're going to go to people that are a lot worse than analysts and I'm sorry but, you know, that's not my concern. It's like saying, "Well, what happens to all these students who want to do Sanskrit now that you've wrecked the

department?" It's not my problem. It's my problem to find out if something's true or false, corrupt or incorrupt and afterwards, what gets done. It's not my concern. So, I'm sorry that patients will not want to go to analysis. They, you know, if they ask me what I think, I'll tell them, "Well, they're a hell of a lot better off than they are in any other kind of therapy."

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Tape 12 at 16

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MASSON: Oh Yes. Until, but, but then it switched, you see, once Eissler took me over, and I [???] –

CAMMELL: Then they all want you, huh?

MASSON: Then they suddenly, you know, "Our friend Masson." As long as I was within the hierarchy then I became, "Well, you know, we always knew Jeff would do well." "My friend, where have you been, I haven't heard from you in so long" "I understand you're head of the Archives, can you get me this, can you get me that?" And then they, then they start suddenly, "Would you help us with this, would you help, would you send us this, would you send us that?" Then I get thrown out of the Archives, and not a word of greeting any more. Now you cannot call that loyal friendship.

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Tape 8 at 34:27-35:7

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MASSON: And most analysts are going to talk about it, too, with their patients. I know that they already

are. If they say, "This is nonsense," then people are going to react a little bit like the Hartmann story: "Thank you very much. I won't be returning."

MALCOLM: Yeah.

MASSON: It's going to happen and I'm not, I don't care really. I mean, I don't feel, I mean, it's just not as if I have sleepless nights over what I'm going to do to analysis.

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Tape 19 at 41:25-27

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MASSON: Yeah, oh yeah, I mean there's certainly really historical [???] documents that deserve a study. I mean I could write a brilliant article about the tapes of the Archives.

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Tape 19 at 13:2-26

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MASSON: Yeah, I think it really is, but I think you'll be glad that it is because I really feel that this is going to take a historical place, you know. It's, it's not just a, a, a pleasant article about some theme that's captured people's interest. It really is something that's going to be significant cause I'm absolutely convinced. The more I look at this, and like presenting it to somebody like Nancy Miller over the last three days, who came quite fresh and realizing the impact that the story finally has when they've absorbed all the information, I realize it

really is going to affect the practice of psychotherapy. There's no question of it. So that I think that the, the material surrounding it is terribly important and I –

MALCOLM: Um-hmm.

MASSON: – I mean, and she also, Nancy Miller agrees with me that it's not my place to talk about it.

MALCOLM: Yeah.

MASSON: That in the book I'm not going to say anything about myself whatsoever, and what I did or how I found things or who I know or, but it is, it is the, the obvious question. Everybody's gonna want to know: "How did this happen?" And at that point your article will be there –

MALCOLM: Um-hmm.

MASSON: – and that's absolutely perfect. I mean the timing couldn't be better. By the way, the book was sold to Faber & Faber.

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Tape 19 at 4:22-23

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MASSON: Yeah, yeah, well he's, he's (Eissler's) going to have to write a whole library when my book comes out.

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Tape 17 at 53:14-24

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MASSON: I hope not. God, I really want it to come out, I mean not just because it provides, you know, proof of my theory but because it is such an important work.

MALCOLM: Sure but everybody wants it. I mean, I would think all analysts would –

MASSON: All analysts –

MALCOLM: –be interested in this.

MASSON: Well, of course they are. But I think that somebody like Eissler – You should have asked him directly, "Do you want this to appear?" I mean I don't think he does want it to appear.

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Tape 16 at 16:25-28

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MASSON: I know that some people like me enormously, really take to me and then are very loyal to me, and others hate my guts from the beginning. But I didn't entirely understand that I would have such a catalytic effect on analysis.

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Tape 17 at 12:18-13:15

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MASSON: That's right and you know, it's like having one good friend. You know, you need that and

when you suddenly discover you're really alone, like I discovered that night at Eissler's, you know, looking around me and here were thirteen men and two women who had all been around, you know, they'd all done analyses for umpteen years, uh, there was no reason for them not to see what I was saying, and say – a little bit like Furst said afterwards, not at the time but, you know, I expected them all to say right at the time: "Look, Masson, of course you're right; of course these things exist; wonderful that you found them but, you know, this just isn't the way to go about it. We are a profession and we're going to get destroyed if you do this. Now we understand that you have to do it but you should really understand, you can't be part of the Archives," uh, and I would say, "Yeah, I see that." And had Eissler said that to me, "How can I ask you to be running the museum in Anna Freud's house when you yourself are discovering so many unpleasant things about Freud? Of course they're there. Of course they're real. Of course your interpretations are correct. You're a historian but then you shouldn't want to be part of this." And I would say, "Well, you know," I'd say, "Yeah, I guess you're right." He'd say, "The only honorable thing to do, Jeff, is to resign." And I'd say, "Yes, yes, you know, I, I see, you're right. I understand that." But that's not what they did. You know what they had to do was trivialize what I had found, pretend that I was some sort of, uh, narcissistic uh –

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Tape 20 at 18:10-22

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MASSON: – you know, all the qualities I knew he (Eissler) had, he still has. Uh, I was surprised that he showed such cowardice. I mean I was convinced that he would say to these thirteen men: "Fuck you," you know, "I don't care what you think. I've never cared before. I don't care now."

MALCOLM: Yeah, yeah.

MASSON: "And I, I don't expect you to like Masson. Just shut up and do what I tell you." [laughs] You know, sort of thing. I was just amazed at his cowardice and then I was amazed that he didn't have the guts to say to me: "Look, you're a hundred percent right, uh, you haven't done anything wrong, but this is a yucky world and, uh, I have to play by the rules and I'm kicking you out."

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Tape 20 at 27:26-28

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MASSON: And I would go to this Clark Institute of Psychiatry which is now, you know, I consider one of the rat holes of the world.

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Tape 21 at 18:17-22

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MASSON: I mean it really, I mean in a sense there is, I mean I do understand one point, namely that I

was given access to these documents in the belief that I would enhance psychoanalysis. And what I have done is use these documents to destroy psychoanalysis. Now I understand that but I, I don't feel responsible for that.

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Tape 22 – Side B at 17:19-25

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MASSON: Oh yeah, oh yeah, I mean, you know, I really believe this book that I'm writing is not, you know, it's not just an opinion. It is the truth.

MALCOLM: Yeah.

MASSON: I mean that's true. It's historical stuff and you know, sooner or latter it's going to be recognized. I mean cause it's not my opinion.

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Tape 22 – Side B at 18:14-21

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MASSON: It's true. That's that's what he (Eissler) would have said: "Never let it out. It's just between the two of us. We can know this. We're strong enough to digest it. But anybody else, it would collapse – It would be the beginning of the end of psychoanalysis." And the, of course, then the next step would have been to say: "But, Dr. Eissler, surely we don't have the right to hide away information simply because it's going to destroy a profession, if it's the truth?"

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Tape 22 – Side B at 22:21-23:4

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MASSON: And, uh, I mean it's sad, you know. I can't really believe that there's anybody who will appreciate this book I've just written more than Eissler.

MALCOLM: Yeah, yeah.

MASSON: In some way. I mean he'll never admit it. He [sic] gonna, you know, he'll kill himself when he reads it. It's gonna destroy him. But I mean, he will, he will be utterly fascinated by it.

MALCOLM: Yeah.

MASSON: 'Cause it's exactly the kind of scholarship he admires.

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Tape 19 at 47:18-20

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MASSON: But I – She's not terribly, you know, not unusually bright and she doesn't know much. Well, as you'll discover, most analysts don't know really anything about the history.

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Tape 19 at 36:11-15

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MASSON: But I don't think that's entirely honest 'cause I think like you, I think that he (Eissler) really did know somewhere that I wouldn't do what he did – that I would do much more. And be much braver and

that these are the things he couldn't do, but secretly wished to do.

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Tape 17 – Side B at 41:14-42:2

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MASSON: Sure, well, listen, you have to keep your total freedom for it and, you know, just do what has to be done, uh, I don't think, you know, I mean certainly for you it doesn't matter if it comes just before or just after the book and I don't think really, you know, I mean my concern cannot be with how well the book sells. I think the book's going to sell on its own because of what's in it and –

MALCOLM: Definitely, that's right, yeah.

MASSON: – it just has to take its chances out there in the real world and that's –

MALCOLM: Well, you've got a good publisher, that's, that really –

MASSON: I've got a good publisher and *The New York Times* is definitely going to do the story before the book comes out – on the book, and I, you know, even my typist, just some ordinary typist typing it, she said, "God, I can't imagine what analysts are going to say."

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Tape 17 at 43:3-44:9

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MASSON: I can't imagine any analyst reading that [Masson's] book and coming away indifferent.

MALCOLM: Yeah, yeah.

MASSON: It's just not possible, you know, it's just too, the material itself is just too powerful, uh, all this stuff so, but I'll see – I'm going to have some idea. They've asked me to give, uh, a big lecture in May here on Emma Eckstein.

MALCOLM: Um-hmm.

MASSON: Emma, uh, Freud, Fliess and Emma Eckstein, at the university, so, uh –

MALCOLM: So you'll get a sense of the reaction?

MASSON: I'll get a sense of the reaction from that. I'm really kind of curious.

MALCOLM: Will there be analysts at that lecture too, or or no?

MASSON: Oh yeah, I'm sure they'll come, yeah, cause it's being widely advertised so they'll all come into it, uh, but I, you know, I more or less know, I don't really know what the analytic reaction will be when they actually see this stuff in cold print but I know that it's not going to be a minor one, I mean, they're going to get really upset and especially in the new version. It's much tighter, you know, and the whole thing, it's just more, in a way uncompromising. It doesn't let you go, you know.

MALCOLM: Um-hmm, um-hmm.

MASSON: And I think one of the problems with the earlier version, the one you said, is that I gave so

much material and so many other opinions that people could be deflected.

MALCOLM: Um-hmm, um-hmm.

MASSON: And deal with, with things, but I think this way they are going to be forced to deal with the issues.

MALCOLM: Um-hmm, um-hmm.

MASSON: Which I really think are important ones. I really do. And I, I just can't believe that it's not going to affect analysis.

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Tape 13 at 40:9-28

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MASSON: He writes beautifully. He writes very well and very clever and he's good, you know. But he's not a discoverer in the way I am. He won't go out and find new things. He waits until you bring it to him and then he'll look and say, "Yes, I see." But he gets bored very easily. He'll say, "Okay, I see it, don't bother me." He mainly spends his time mocking the people who don't do that. [laughs] At which, he's very good and the two of us together is devastating. If there's some poor guy around who's not as quick as we are, I mean, it's just terrible. People hate us. We're a terrible team.

MALCOLM: [laughs] And talking with Indian accents.

MASSON: [laughs] And talking with Indian accents to boot, I mean unbearable, no question of it, but

yeah, no, I didn't enjoy talking to him as much as I enjoyed talking to Terri because she can really think and she's always more deep than I was about everything she'd done. And it was very exciting for a while and I think the two of us, I think that was what our marriage was, you know, a real hive that we had, a real intellectual hive. I can't think of any two people that have ever had a more intimate intellectual relationship than Terri and I.

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Tape 2 at 5:1-22

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MASSON: Aaah. This is critical. This is really where it all started.

MALCOLM: And you found this in Anna's cupboard?

MASSON: The whole story and it is, I mean, that's, that is the wedge that's going to topple psychoanalysis. That story.

MALCOLM: But if you topple it and it's the best show in town, and then you're going to have no show.

MASSON: Right.

MALCOLM: So what is, what is everybody going to do?

MASSON: Well, that's a good question. But that's another question. [laughs] I mean, that's not, that's not my business.

MALCOLM: Because everybody [???]

MASSON: I mean, in a sense Eissler could say that. Suppose Eissler were like you, listening, and he says: "You know, you're right. I've looked at all the evidence, I've read it, you're a hundred percent right. But are you aware that if you go out and say this, if you publish this in *The New Yorker, The New York Times*, and you publish your book, do you realize what you're doing to the public? Do you realize you will – psychoanalysis will disappear as a profession and what will replace it, Masson? Huh?

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Tape 3 – Side B at 45:6-23

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MASSON: And I realize – you know, Fichtner was trying to explain it when I was here. He said, "Look, Jeff, you've got to understand that people like that and me," he said, "you know, spend our lives desperately searching for one single unpublished Freud letter, and we get it and you look at it and say, 'Ech, it's not so interesting,' because you were given thousands of letters. It's just not fair. You've got to put yourself in our place." And, of course, he's right.

MALCOLM: Um-hmm.

MASSON: I mean, for a Hartmann or a Swales or a Fichtner, you know, they turn up one thing, it then becomes part of their life.

MALCOLM: Yeah. Yeah.

MASSON: And to have someone who then has hundreds and thousands of these look at it, and you

know, say, "Yech, big deal," it's like telling some, you know, peon in South America, who discovered a tiny little diamond and brings it to De Boer, you know, for De Boer, it's nothing; but him it's his life.

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Tape 5 at 33:10-33:26

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MASSON: I mean, I've had people say to me, "I have spent my life trying to get one letter of Freud's, and you go there and Anna Freud opens up her bloody desk to you. Why? Why you, you little son-of-a-bitch? What did you do?" And I said, "Well, I don't know." In Chicago that was actually a question from the audience. One of the senior analysts said, "I just want to ask one question. Why you? Who's ever heard of you? We've never heard of you. You're not famous. You haven't written much. You're a nobody. Why should you get all these privileges and we get nothing?"

MALCOLM: How did you answer that?

MASSON: I finally said, "Because I'm smarter than you."

MALCOLM: [laughs]

MASSON: Which is true. "And I know more, too, and I've got more guts and I asked. And I mean, there are all kinds of reasons, and I'm actually very good at what I do," and so on and so forth.

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Tape 12 at 10-11

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MASSON: Well, but you see, then you have to realize it wasn't just Eissler. If it were just Eissler, and it was just a question between me and Eissler, me and Calef, I mean, okay, it's me and the whole of psychoanalysis, as you'll soon see.

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Tape 6 – Side B at 45:1-20

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MASSON: I liked the fight but I was in a very strong position in a way. They had really nothing to say beyond, "We're going to fire you because Eissler's told us to." They didn't know anything else and I knew everything and Eissler knew everything. So, I had a lot to say and they really had nothing to say and I could show them up for the cowards they were and I guess I got a certain pleasure from that unfortunately. I would have wanted one friend to be there, someone like Bob or Terri, just one witness of what was going on.

MALCOLM: Yeah, yeah, that's too bad that –

MASSON: It would have pleased me enormously because I was doing, I mean, in effect, I was taking on, it's like, you know, these child fantasies or these Kung Fu movies, you know, where Bruce Lee takes on fifty men.

MALCOLM: Yeah.

MASSON: It was that kind of thing, you know.

MALCOLM: Yeah.

MASSON: There were these thirteen older men, grown up, training analysts, every single one of them fighting me, and they were losing badly. I mean, they just were no match.

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Tape 5 – Side A at 16:28-17:19

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MASSON: I want to know what analysts are going to say when my book comes out. I'm really curious because they can't dismiss it the way they can dismiss Sulloway or Roazen. It's not light-weight like Roazen; it's not pretentious like Sulloway. There are new documents. There is no way they can dismiss it. I know that. That is, no serious scholar is going to be able to say: Well, this is just nonsense. They are going to be utterly dumbfounded, and I really believe it is true. Everything I say in there is true. And I think it's going to have a slow effect. I think it's going to eventually break the edifice apart. Just because people are going to hear about it. By luck, it's become well known already. I mean, there is going to be a big press about it, and it's going to be read by a lot of people, and it's going to sink in. You know, patients are going to read it and say: Jesus Christ, if this is really true, and it sure looks that way, what the hell am I doing with this man?

MALCOLM: Are you saying that everybody in this profession is corrupt beginning with Freud?

MASSON: Yes.

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Tape 5 – Side A at 24:1-20

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MASSON: Yeah, my own book. See, I'm not going to interpret in that book. Like I'll give that passage; I won't say a thing. I'm not going to say –

MALCOLM: Will you write an introduction?

MASSON: Yes, a long introduction, but purely scholarly: all the new information I've discovered, but nothing interpretive, nothing, what a shit Freud was [laughs], nothing, just –

MALCOLM: And this will replace that old –?

MASSON: Yeah, *The Origins of Psychoanalysis*. Kris and Anna Freud and Maria Bonaparte.

MALCOLM: When will it come out?

MASSON: I hope September.

MALCOLM: Then both books will come out in September?

MASSON: That's what I'd like.

MALCOLM: Um-hmm.

MASSON: But I think it's going to take longer. It's a, it's a huge three volume work, the Letters, so I don't know. It may take longer. But that is definitely going to shake analysis, too, and that won't be my fault because all I've done is edit the Letters.

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Tape 9 – Side A at 30:2-22

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MASSON: It was the publicity. He said, "If you had published that article in *The Journal of the American Psycho-Analytic Association*, I would have had no objection, but that you went to *The New York Times*, that, that's it, that's what did it." And I reminded him, "I didn't go. You sent them." He said, "Well, you should have been more discrete [sic]." I said, "Okay, so I was somewhat indiscrete [sic]." "You showed poor judgment." "Fine, I showed poor judgment. Is that any reason to destroy my career?" "Yes." But then, why? The question is why? You see it wasn't just really around me. That's the, that's the whole point. I mean, there was some sense in which they were smarter than I was. They sensed underneath this was a whole groundswell and once this was totally out, all these things I had discovered, it would end up by toppling the business of analysis, and that I really believe. I believe that it's got nothing to do with me, and there's no way I can stop it then when my book comes out and all of this is known, it is going to be the beginning of the end of analysis as a profession.

MALCOLM: Do you have a name for your book yet?

MASSON: Well, I call it, "The Assault on Truth," but I don't like the title.

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Tape 17 – Side B at 55:2-14

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MASSON: Oh, they'd just stall it forever. And they would hope that somebody would not call attention to anything. Not that I have, mind you. I have been very careful not to use it as a, uh, loudspeaker for my views. There are no, I mean I don't even say, "Note what Freud says," I just simply annotate it in a purely historical manner, but I think that they're so frightened – Anna Freud was and Eissler of what this, the implications, the full implications, I mean, that's the book that's going to bring down psychoanalysis. Uh, not mine, but only because my book is there, you see –

MALCOLM: Yeah.

MASSON: – it wouldn't have without mine; it would have taken years before anybody would have picked up anything.

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Tape 22 – Side B at 18:1-21

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MASSON: But it, yeah, but I don't think there are too many interpretations possible of this kind of material. You know it's just overwhelming the amount of, of information that's been suppressed and so on. I mean it's clear to me that Anna Freud and Ernst Kris just wouldn't allow Freud to say what he wanted to say.

MALCOM: Yeah, I see.

MASSON: You know and I think Eissler would have admitted that. I think if I had said to him: "Look, you know, I'm not going to ever say this, but just between you and me –," he would've said, "Yes, you're right, but never, never tell the *goyim*." [laughs]

MALCOLM: [laughs]

MASSON: It's true. That's, that's what he would have said: "Never let it out. It's just between the two of us. We can know this. We're strong enough to digest it. But anybody else, it would collapse – It would be the beginning of the end of psychoanalysis." And the, of course, then the next step would have been to say: "But, Dr. Eissler, surely we don't have the right to hide away information simply because it's going to destroy a profession, if it's the truth?"

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Tape 7 – Side A at 22:2-25

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MASSON: Yeah, but Janet, they haven't seen my book.

MALCOLM: I see.

MASSON: I assure you when that book comes out, which I honestly believe is an honest book, there is nothing, you know, mean-minded about it. It's the honest fruit of research and intellectual toil. And there is not an analyst in the country who will say a single word in favor of it.

MALCOLM: Uh huh. Yeah, but I mean they may still be friendly toward you.

MASSON: No, never. I assure you.

MALCOLM: You think Shengold wil [sic], will be unfriendly –?

MASSON: Absolutely, absolutely. They will not, I mean, they may do it very privately. Look at the fact that I was not any longer invited to anything after this.

MALCOLM: Uh huh.

MASSON: I mean, why would that be? I'm the same person, right? And even the opinions I have are identical. Everybody knew the opinions I had and as long as Eissler was behind me and Anna Freud was supporting me, I was invited everywhere.

MALCOLM: Yeah.

MASSON: And loved, even though hated in some way.

MALCOLM: Yeah.

MASSON: And now, nobody. Not a single analyst. I never have any contact now with analysts.

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Malcolm Deposition at 271:7-272:22

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Q Then, after that sentence you write:

"Wait until it reaches the best seller list, and watch how the analysts will crawl," he crowed. "They move whichever way the wind blows. They will want me back. They will say that Masson is a great scholar, a major analyst – after Freud, he is the greatest analyst who ever

lived. Suddenly they will be calling, begging, cajoling. 'Take back what you said about our profession; our patients were quitting.' They will try a short smear campaign, then they will try to buy me, and ultimately they will have to shut up. Judgement will be passed by history. There is no possible refutation of this book. It is going to cause a revolution in psychoanalysis. Analysis stands or falls with me now."

Was that conversation tape recorded?

A It was not.

Q Do you have a note of the conversation on the telephone a few days after you returned to New York?

A I do not.

Q Did this conversation take place within a few days after you returned to New York?

A I believe so.

Q Was this written just from memory?

A No, I relied on tape recorded – other tape recorded conversations of the same kind.

Q Let me see –

A There are excerpts. I took things from other conversations on the subject of Mr. Masson's book to reconstruct this conversation.

Q Let me see if I understand what you are telling me now. You are conveying to the readers that you had a telephone conversation with Mr. Masson; is that correct?

A That's right.

Q You are saying that some things he said at another time you are now using to create this conversation that you are writing about; is that correct?

A I certainly said nothing of the sort. I never used the language you used, so let's go back to some reality here.

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Malcolm Deposition at 294:5-23

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Q Didn't Mr. Masson tell you that none of the analysts will accept his book?

A That's correct.

Q Did you write that anywhere in these notes?

A I don't think he told that to me – while we were talking he did not say that, as far as I can recall.

Q Maybe I misunderstood you. I thought I asked you a moment ago as to whether Mr. Masson had told you that the analysts would not accept his book.

A Oh, many times he said that; correct, yes.

Q Is it your testimony that before the meeting at your home you had many conversations with Mr. Masson, where he told you that analysts would not accept his book?

A Correct.

Q Is it your testimony that on this meeting that you tell us about at your home, where you wrote notes that

ultimately became Exhibit No. 16, that Mr. Masson never made that statement to you?

A I can't answer one way or the other.

* * *

Malcolm Deposition at 295:23-296:23

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Q At the visit in your home did Mr. Masson say anything about whether analysts would accept or not accept his book?

A Sure, we have my notes here, where he is discussing what he thinks the analysts will do when his book comes out.

Q He is telling you that they will say he is a great scholar?

A Eventually.

Q Does he say eventually?

A "They will want me back, blah, blah, blah."

Q Did you find any inconsistency in what he was saying at this visit to your home and what he had been saying to you before?

MR. KENADY: About what, the reception his book would receive?

MR. MORGAN: Sure.

A It is a contradiction. He said both things. He would sometimes be in a mood to talk about how they would hate his book, and then he would be in another mood and imagined them jumping on the bandwagon.

Q Other than Exhibit No. 16, are you able to point to any document, any notes you made, where Mr. Masson said that analysts will be jumping on his bandwagon?

A That's correct; I don't have any.

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Malcolm Deposition at 297:15-23

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Q When was the first time that Mr. Masson ever said to you that analysts would accept his book?

MR. KENADY: We should establish a chronology.

A In that conversation after his book was accepted by Farrar, Straus, to the best of my recollection, he indulged in some such hyperbole as he indulges in here, you know, some of this is – this is not to be taken literally. This is –

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Malcolm Deposition at 302:2-303:17

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Q Do you recall Mr. Masson telling you, "There is not going to be a single good review of my book. Every analyst in the United States is going to dump on it. You will not hear a good word about me from any analyst you interview."

Do you remember him saying that to you?

A I remember he said that many times.

Q Do you remember saying to him, "Maybe they will speak more kindly of you than you realize"?

A I don't remember saying that.

Q Do you remember him saying to you that they won't?

A Again, I take it you are asking me if, besides reading this, if I remember this conversation.

Q Yes.

A I only remember that many times Mr. Masson would talk about how his book would not be read or liked and that people would only focus on him, personally.

Q It is your testimony that one time in November of '82 and one time in April or May of 1983 he said just the opposite; is that right?

A I don't conceive of it as being the opposite.

Q Then do you understand, then, what you – or are you saying to us that what you wrote on page 117 and 118 of Exhibit 15.2 fairly represents what Mr. Masson had been telling you?

A It is another expression of his contempt for analysts. And sometimes he put it in a way that was – well, he put it as people who would not even take the trouble to read his book or would not want to confront the ideas, and they would just be interested in his personality. And in other instances, in a different mood and spirit, he would say – he would express his contempt for analysts, as he does here, saying that they are the kind of

people who, if something gets popular they will come crawling, and so on.

Q Other than this so called telephone conversation in November of '82 and this so claled [sic] meeting in April or May of 1983, did Mr. Masson ever make that statement to you that they would come crawling to him?

A I have a recollection of him saying this.

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***In the Freud Archives* at pages 53-54**

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While Masson spoke on the telephone, I pondered an incongruity that had struck me the night before while I was reading the paper he had delivered before the Western New England Psychoanalytic Society, in New Haven. In marked contrast to the extravagantly anti-psychoanalytic and anti-Freudian stand that Masson was now taking, the "Yale paper," as Masson likes to call it, even though the society has no connection with Yale, was respectful of psychoanalysis and of Freud, and its tone was scholarly and fairly quiet. Here and there in it, Masson would lapse into a kind of boyishness he is prone to, but on the whole the paper was as sober, and even, in places, as tedious, as the general run of psychoanalytic papers. . . . When Masson hung up the telephone, I told him of these impressions, and asked him what had happened between the time of the lecture and the present to change him from a Freudian psychoanalyst with somewhat outré views into the bitter and belligerent anti-Freudian he had become.

Masson sidestepped my question. "You're right, there was nothing disrespectful of analysis in that paper," he said. "That remark about the sterility of psychoanalysis was something I tacked on at the last minute, and it was totally gratuitous. I don't know why I put it in. The paper was very scholarly, and I thought analysts would be fascinated by my discoveries and would receive them with great warmth. But something causes analysts to ignore my material and to focus on me."

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Tape 6 – Side B at 50:20-52:3

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MASSON: So they couldn't really judge the material. And, in fact, until the last sentence I think they were quite fascinated. I think the last sentence was an in, [sic] possibly, gratuitously offensive way to end a paper to a group of analysts. Uh, –

MALCOLM: What were the circumstances under which you put it, do you remember or what?

MASSON: That it was, was true.

MALCOLM: Yeah, yeah, I see.

MASSON: As simple as that. I really believe it. I didn't believe anybody would agree with me.

MALCOLM: Um-hum.

MASSON: But I felt I should say something because the paper's still well within the analytic tradition in a sense. Unlike the Ferenczi paper.

MALCOLM: Yeah.

MASSON: It's really not a deep criticism of Freud. It contains all the material that would allow one to criticize Freud but I didn't really do it. And then I thought, I really must say one thing that I really believe, that's not going to appeal to anybody and that was the very last sentence. Because I really do believe psychoanalysis is entirely sterile and I believe that one, but so does Anna Freud believe that, so does Eissler believe that, though they would never say it publicly.

MALCOLM: And they wouldn't say it's because of Freud himself.

MASSON: Well, I didn't exactly say that. I said, "He began a trend away from the real world that has come to a dead halt," and that's what I believe.

MALCOLM: Yeah.

MASSON: So, I mean, whether you say Freud was responsible or not, I don't know. But I mean, certainly there are some, uh, yeah, he is responsible. [laughs]

MALCOLM: Um-hmm.

MASSON: Well, I mean, they got that right, sure. But anyway, I have a right to my opinion, and that is, after all, only speculation. I don't know why psychoanalysis is sterile today.

MALCOLM: Yeah, yeah.

MASSON: But it sure as hell is.

* * *

Masson's Letter

October 12, 1981 letter to Board of Directors of Freud Archives: "The last paragraph of the paper on seduction that I gave to the Western New England Psychoanalytic Society, in which Dr. Eissler felt that I was laying the blame for the current sterility of psychoanalysis on Freud's abandonment of the seduction hypothesis. I agree that this paragraph of my paper was unfortunate, and

poorly worded. I do believe, however, that current psychoanalysis, around the world, is not very vital, and I do sometimes wonder whether this has anything to do with a turn away from the real world. But these are my own private opinions for which, of course, nobody is responsible but me. This is as much as I know about how I have come to be here and would very much like to learn more."

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Tape 1 at 45:24-28

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MASSON: Cause I said, my last comment was, – God, I can't remember now. I'll read it to you, but it was an offensive comment. About, something, "This explains the current sterility of psychoanalysis throughout the world." Which I believe.

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Malcolm Deposition at 290:2-10, 17-19

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A This is a statement that Mr. Masson made to me at some time, yes.

Q You were representing to the readers that was a quote from Mr. Masson; is that right?

A Mr. Masson refers to this coda in his speech many times.

MR. KENADY: What does coda mean to you?

THE WITNESS: End.

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A I remember what I was about to say. Again, this is the substance of many conversations that Mr. Masson and I had on the subject of this coda.

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Malcolm Deposition at 291:2-17

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Q Do you have any notes, records or memoranda of any statement by Mr. Masson where he said, "I don't know why I put it in"?

A No, that one I cannot substantiate.

Q Mr. Masson told you why he put in the statement, didn't he?

A Sometimes he did and sometimes he didn't in our discussions. I do remember once he said, "I don't know why I put it in." That lodged itself in my mind.

Q Are you able to point to any part in the transcript where Mr. Masson said that?

A I think it is in the transcript that he said it was gratuitous, which, in a sense, has some of the meaning of I don't know why I put it in. If you are putting in something that is gratuitous, then maybe you have a little doubt about why you put it in.

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Malcolm Deposition at 298:6-19

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A I have a recollection of a conversation with Mr. Masson where he said that he didn't know why he put it in. I don't remember whether it was on tape or not.

Q Have you ever seen any transcript where that statement is there?

A I cannot think of one.

Q Have you ever seen any note of yours where that statement is there, and because you say that, that statement was unrecorded?

A I think offhand this is a recollection, rather than something that is documented.

Q Are you saying that you are not aware of any note, record or memoranda of such a statement by Mr. Masson?

A I am not.

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Malcolm Deposition at 300:21-25

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Q When he said, or when you wrote that he said, "I don't know why I did it," what did you intend to convey to the readers by that?

A Well, I was conveying what I think he meant to convey, which was that it was an impulsive decision.

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Malcolm Deposition at 312:8-21

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Q Did Mr. Masson ever answer your question?

A Let me put it this way. I never said, "Jeff, what has brought on your sudden virulent anti-Freudianism," as far as I can remember. Maybe you can find it in the testimony and I am mistaken. I am talking about my state of mind here and not Mr. Masson's. I am saying that my question about this was not answered. This is the meaning that I meant to convey with this passage.

Q Maybe I misunderstood you. Are you saying that you never asked the question, "What brought on your sudden virulent anti-Freudianism"?

A I don't believe I asked it as such. You may correct me if I did. That was not my meaning in this piece of writing.

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***In the Freud Archives* at pages 149-50**

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It was the same thing with my discovery about the Schreber case. That was even more appalling. I found an 1884 article in Freud's library written by Paul Flechsig, Schreber's psychiatrist, which he had personally sent to Freud, reporting that he performed castration experiments on hysterical and obsessional patients in his asylum. This means that when Freud wrote his essay on Schreber he knew that castrations had taken place in the asylum where Schreber was held, but he still could write that Schreber suffered from the *delusion* that the great Paul Flechsig wanted to castrate him. I think Freud was a great and remarkable thinker, but *he wasn't honest*. He was a man who just lost his courage. His entire theory after he abandoned seduction was the product of moral cowardice, because Freud knew that Schreber was in an asylum where they were trying to castrate him, and he never mentions it. Now, what would you say about somebody like that? No matter how brilliant he is, how good a thinker he is, he is not being honest if he omits that fact from his essay."

"That's a very serious charge against Freud," I said. (Later, it occurred to me to wonder if Flechsig had not sent Freud the article *after* Freud had published his essay on Schreber; when Flechsig's article first appeared, Freud was an obscure young neurologist, to whom an eminent psychiatrist was not apt to send complimentary reprints.)

"There aren't too many interpretations possible of my discovery," Masson said grimly. "I think Eissler would have admitted that I was right. I think if I had said to

him, 'Look, I'm never going to make this public – this is just between you and me – but just take a look at this,' he would have said, 'Yes, you're right. But never, never tell the goyim.' I swear that's what he would have said. 'Never let it out; it's just between the two of us. We can know this. We're strong enough to digest it. But for anybody else it would be the beginning of the end of psychoanalysis.' It would have been like Dostoyevski's Grand Inquisitor."

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Tape 2 – Side B at 47:8-50:19

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MASSON: You know, it's interesting because that comes up in the Schreber case. That it was Niederland, this New York analyst who discovered for the first time that, you know, Schreber was in this asylum in Leipzig that was run – the university clinic of Leipzig was run by a man called Flechsig, Paul Flechsig who was a famous psychiatrist. And it turns out that Flechsig, – and he then had the quote "delusion," according to Freud, that at the asylum they were trying to "unman" him, castrate him, turn him into a woman. The only problem was that Niederland turned up a very important article by Flechsig in which he reports cases of actual castration in his asylum.

MALCOLM: God!

MASSON: "Paranoid beliefs!"

MALCOLM: Um-hmm.

MASSON: Now what I did, I went a step beyond Niederland but it was important. He wouldn't draw any conclusions from that, but I did something even more. It turned out that not only did that take place, but the article in which he reported it he had sent to Freud! Flechsig. And Freud has that article in off-print form in his library! From Flechsig. So Freud knew when he was writing the Schreber case that Flechsig had performed castration! And still did not write that maybe there was some truth to what Schreber was fearing.

MALCOLM: So you've developed a very ambivalent view toward Freud, haven't you?

MASSON: Uh huh! It's more than ambivalent. I think he was a great and remarkable thinker but he was still a, a, a man who just lost his courage.

MALCOLM: Um-hmm.

MASSON: He was a brilliant mind who didn't have the courage to stick with things that he knew were true. I mean, just look at that Schreber thing! He must have known it. When he came to write that, he did not say so. Why? Cause he didn't want to insult a famous psychiatrist like Flechsig. And because he knew it wouldn't be good for his theories. I mean that's all supposition. But I mean, something happened.

MALCOLM: Yeah.

MASSON: It's not honest in the end. You don't write – And it was the first piece ever written on the psychology of homosexuality, the first attempt to unravel the mystery of homosexuality by Freud. It's a brilliant and convincing thesis. And it's dishonest. Cause he knew

that the man was in an asylum where they were trying to castrate him! And he doesn't mention that. Now what, what would you say about somebody like that?

MALCOLM: Yeah.

MASSON: No matter how brilliant they are, how good a thinker, they are not being honest if they omit that fact from their essay. Suppose you had a student who had done that. What would you tell them?

MALCOLM: That's a very serious charge against Freud.

MASSON: Umm. Exactly.

MALCOLM: And this, now this is the sort of thing that would have made Anna Freud afraid of you.

MASSON: Uh huh. Yeah. But why? I mean, was she afraid that I was inventing these things or was she afraid they were true?

MALCOLM: True. But it would be very difficult for the daughter of a great man to –

MASSON: Of course. Oh, but that's why I didn't want to publish my book during her lifetime. I mean, it would have poisoned her last days if she had seen that. I mean, what can she do with that kind of knowledge? It will be interesting. What will Eissler do with it? What will he say in excuse? Cause he will find an excuse. He'll say, "It's perfectly normal that Freud didn't mention it."

MALCOLM: Well that would be interesting: what reason he would, he would give.

MASSON: Uh huh. Pin him down.

MALCOLM: So you have letter fro – tell me this again. From – Freud –?

MASSON: Which one, the Flechsig story?

MALCOLM: Yeah.

MASSON: Very simple. Fleschig [sic] wrote an article in 1880 called *"Zur gynaekologischen Behandlung hysterischen Krankheiten,"* "On the gynecological treatment of hysterical illnesses." Hence, a topic of real interest to Freud. Freud has an off-print of that article in his library, catalogued. Flechsig runs the sanitorium at Leipzig in which Schreber is incarcerated in 1892. Freud knows that. So Freud knows for certain that Flechsig had performed castration experiments on hysterical people and people suffering from obsessional neurosis which is what – and paranoia which is exactly what Schreber has.

MALCOLM: That was allowed? They could do that?

MASSON: Allowed! He would – yeah. He could do anything he wanted. A medical doctor could do what they wanted then. Now, the point is that Freud then writes this essay on Schreber in which he tries to find the origins of his homosexuality in his relationship to his father. He said he suffered from the delusion that the great Paul Flechsig wanted to castrate him.

MALCOLM: Yeah.

MASSON: Paul Flechsig *did* want to castrate him.

MALCOLM: Yeah. Yeah, yeah.

MASSON: And Freud wouldn't admit it, even though Freud knew it was true. Now, okay. What could one say in Freud's defense? He forgot?

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Tape 1 – Side B at 61:16-62:16

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But in order to understand the genesis, I mean, it's like Schreber. Can you understand Schreber unless you know what his father did to him? Freud thought you could and it's not true. Moreover, Freud is lying. I found a letter just last week, an unpublished letter in which he tells Ferenczi, "Can you imagine? The father was a tyrant." [There was a] whole story about the father. He knew about the father. But he wouldn't publish it. When he came to write his article he omitted it. And that was not known. And I'm the first person to know that. Now that, I mean, so, blatant – Why would Freud do that? Why would he write about the genesis of homosexuality and say, "it comes from fantasies about a father and this father was a wonderful man, he was a physician, the famous Dr. Gottlob Moritz Schreber whom everybody adored, uh, perfectly appropriate to see him as a god, since he was a physician of renown," when he knew that wasn't true?

MALCOLM: So you're saying that Freud to make this theory come out –?

MASSON: Yes –

MALCOLM: [???]

MASSON: He was willing to forget everything that he knew that was really true. He forgot everything that happened to him in Paris. Well, "forget." Who can say what happened? Except I know for a hundred percent certain now, I can prove it, I mean, that Freud saw cases of children who had been sexually abused by their parents in Paris in 1886. Now we can then say: "What happened to that? Did he forget it? Did he suppress it? Did he obliterate it from his mind? Did he repress it?" We don't know.

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Tape 9 – Side A at 3:17-5:28

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MASSON: Because even Niederland who discovered this before I did, though he didn't know that Freud had the article in his possession; he found the article by Flechsig and he said, "It still doesn't make any difference." It's very interesting to know this but Freud's essay is still the greatest thing that we have and nothing should be touched, and he also writes: "I can't see any reason why Freud would have changed his views had he known the author's, the, uh, Schreber's father's works. There is no reason for him to do so." That's just not true.

MALCOLM: Now the works, these are the, uh, these are the journals where he tells what he did to the boy?

MASSON: No.

MALCOLM: Well, I would think that would make an enormous difference.

MASSON: But Niederland doesn't, and Niederland discovered them; he discovered, I mean he was the first to bring them to attention.

MALCOLM: And it is known that Freud also knew about them?

MASSON: No, no.

MALCOLM: Freud didn't.

MASSON: We don't know.

MALCOLM: Yeah, Yeah.

MASSON: I now know for sure – something that was not known before: namely that Freud wrote to Ferenczi, "The father was a tyrant."

MALCOLM: Suggesting that he might have known –

MASSON: Suggesting that he might have known something beyond what he told us. Or that could have been an interpretation.

MALCOLM: Yeah.

MASSON: If the father were a tyrant, then we could understand, but the important thing is that Freud never brings this into his essay, never says, "Suppose Schreber's father was in fact a vicious man, what then? What does this do? What is the significance of this?" He doesn't. He says his father was a wonderful physician. And that's dishonest, too, you see. Time and time again, Freud is dishonest, and this is the thing that Schur was beginning to realize.

MALCOLM: Well, are you going to really come out and say this in so many words?

MASSON: Why not?

MALCOLM: Yeah, yeah.

MASSON: It's true. What should I do, say the opposite?

MALCOLM: No.

MASSON: Of course, and if I'm wrong, I'm wrong, fine, but you can't say I'm wrong because I'm Jeff Masson and young or whatever. I mean, you have to say, "No, Freud didn't have the article; Masson has discovered the wrong –" I mean you can't say, "Everything that Masson says is correct historically but his conclusions are totally false because he's a, you know, loudmouth or whatever." I mean, those kind of *ad hominem* arguments are no good, and that's why I'm glad –

MALCOLM: Yeah.

MASSON: – I'm bringing out the book and that's why I'm somewhat inclined not to do it with Farrar, Straus, but to do it with Harvard, who will let me, you know, give my fourteen hundred footnotes, giving all the documentation and let people argue with the book.

MALCOLM: Yeah.

MASSON: You know, but the other thing is separate, that's something that should come out of your article – the whole story behind it which is, I frankly think, a fascinating story.

MALCOLM: Yeah.

MASSON: And it is intimately connected to all this. I mean, it effects [sic] everybody really. But it is separate from the kinds of things I discovered.

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Tape 9 – Side A at 1:12-2:10

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MASSON: Yeah, I mean, look, Schreber was psychotic, no doubt he did have delusions and strange thoughts and fantasies. The question is you cannot form a theory about the origins of homosexuality based on pure fantasy when this kind of thing is going on in his everyday life. And Freud knew it. I mean, it's not even as if he mentioned it to dismiss it, which he'd have a right to do, right?

MALCOLM: Yeah.

MASSON: He could say: I have here in my library an article by Paul Flechsig, in which he recommends castration. Now, you may wonder whether this had anything to do with Flechsig, with Schreber's delusions. My answer is: It did not.

MALCOLM: Uh huh.

MASSON: And it leaves the reader the opportunity to think about it by providing evidence he knew to be germane to the issue, but Freud doesn't do that. He passes it over in total silence. And that was a horrible revelation to me. I didn't think Freud would do something like that. I honestly didn't. I even wrote in my Schreber paper when I – the one that I met with Eissler over, I said, "I cannot believe that Freud knew the works

of the father. I simply do not believe he knew them because if he did, he wouldn't be able theoretically to ignore this and –

MALCOLM: Yeah.

MASSON: [illegible]v, I know that's not true.

MALCOL[illegible] So what did Eissler say then?

MASSON: He agrees with me, of course.

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Tape 22 – Side B at 17:5-18:18

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MASSON: Not my views because they're really the views that he would have shared. I mean if i could've had enough time with Eissler looking at these documents, he would have said, "You're right, but let's never tell anybody. Let's – "

MALCOLM: You mean he, he would've – But he seemed to disagree that the, the seduction theory was, was correct. He kept saying, "No, it's wrong and he knew that Freud knew it was wrong and – "

MASSON: Yeah but if, I mean if he had let me talk to him long enough about all the new material, he would've had to share more or less my point of view.

MALCOLM: Um-hmm. You really think so?

MASSON: Oh yeah.

MALCOLM: You think you could have persuaded him?

MASSON: Oh yeah, oh yeah, I mean, you know, I really believe this book that I'm writing is not, you know, it's not just an opinion. It is the truth.

MALCOLM: Yeah.

MASSON: I mean that's true. It's historical stuff and you know, sooner or later it's going to be recognized. I mean cause it's not my opinion. It's different if I were to simply say, "I think Freud was wrong to abandon seduction." That's just my opinion, right?

MALCOLM: No, but it is your interpretation of, of, of –

MASSON: But it, yeah, but I don't think there are too many interpretations possible of this kind of material. You know it's just overwhelming the amount of, of information that's been suppressed and so on. I mean it's clear to me that Anna Freud and Ernst Kris just wouldn't allow Freud to say what he wanted to say.

MALCOLM: Yeah, I see.

MASSON: You know and I think Eissler would have admitted that. I think if I had said to him: "Look, you know, I'm not going to ever say this, but just between you and me –," he would've said, "Yes, you're right, but never, never tell the *goyim*." [laughs]

MALCOLM: [laughs]

MASSON: It's true. That's, that's what he would have said: "Never let it out. It's just between the two of us. We can know this. We're strong enough to digest it. But anybody else, it would collapse – It would be the beginning of the end of psychoanalysis."

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Tape 17 – Side A at 13:4-27

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And had Eissler said that to me, "How can I ask you to be running the museum in Anna Freud's house when you yourself are discovering so many unpleasant things about Freud? Of course they're there. Of course they're real. Of course your interpretations are correct. You're a historian but then you shouldn't want to be part of this." And I would say, "Well, you know," I'd say, "Yeah, I guess you're right." He'd say, "The only honorable thing to do, Jeff, is to resign." And I'd say, "Yes, yes, you know, I, I see, you're right. I understand that." But that's not what they did. You know what they had to do was trivialize what I had found, pretend that I was some sort of, uh, narcissistic uh –

MALCOLM: Yeah, that's a, that's very, this is very interesting what you're saying, Jeff, because then this leads to the question: If they had done it in this, what you would think of as a proper way, uh –

MASSON: Yeah.

MALCOLM: – then you, would you then not have sued them?

MASSON: Of course not. I told them that.

MALCOLM: Yeah, yeah.

MASSON: I said that. I mean it was the cover-up; it was the attempt to pretend that somehow this was all my fault. Furst said it. I mean he came out. He said,

"God, of course you're right. Everybody in that rooms [sic] knows you're right, Masson."

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Malcolm Deposition at 496:16-21

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Q Are you saying that Mr. Masson said, "It was the same thing with my discovery about the Schreber case. That was even more appalling," was something Mr. Masson said to you at some time, and you recall it but you did not make any note, record or memoranda of it?

A That's correct.

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Malcolm Deposition at 514:25-515:10

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Q Would you agree that at the time you wrote the article or the piece that you satisifed [sic] yourself that whatever statements that were made by Mr. Masson were dealing with the Schreber concept, as opposed to the seduction theory when you wrote the words you wrote here, that Mr. Masson said, "There are not too many interpretations possible of my discovery, and I think that Eissler would have admitted that I was right"?

A To the best of my recollection, I think that's correct.

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***In the Freud Archives* at pages 145-46**

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Everything Denise did was quick, effective, and pleasant, and she had a warm, easy way with both the girls. She was the owner of two boutiques in Berkeley and of an exercise studio that followed the principles of Jane Fonda. Her father had just lost "all his banks," she said, with a nice mixture of filial rue and self-mockery.

"Denise is *echt* California," Masson said fondly. "When I first met her, you couldn't get more than six words out of her, and they were generally 'like,' 'you know,' 'I mean, like.' She spoke in half sentences. There's something so *echt* California about that."

"It has nothing to do with California," Denise said.

"But you have a basic mistrust of speech, right?"

"It's just not fast enough," Denise said. "It doesn't say what I mean."

During lunch, Denise suddenly turned to Masson and said emotionally, "Those old people – Eissler and Muriel Gardiner – I worry about them. I feel their pain. Eissler knew he was playing with fire when he messed with you, but he couldn't help himself. You're charming – you affect people. You touched Eissler, and you hurt him. I see him bearing the pain. *But you don't feel it, Jeff.* You just don't feel it. I worry about that."

"Denise worries too much," Masson said imperturbably.

"What you did to them, is that – is that *betrayal*?" Denise asked.

"Of course not," Masson said. "What did I do? I gave an interview to the *Times*. Is that reason to destroy a man's career?"

Denise started to say something, and then thought better of it.

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Typed Transcript of Interview at Staal's House

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MASSON: There is no psychoanalyst who will say, "Masson can sit in my living room." Not one of them will allow me near them now. I have become poison.

STAAL: No, I don't agree though –

CAMMELL: But they didn't pick you up. I mean, Eissler took you completely char –, whatever it was, you did it to him.

MASSON: Yeah, but –

CAMMELL: Whatever it was to Muriel Gardiner, you did it to her. Whatever it was to those people –

MASSON: To Anna Freud, yes.

CAMMELL: And that's the le–, that's that level of, I mean, is that, be–, bu–, betrayal?

STAAL: Oh, betrayal, yeah.

CAMMELL: I mean, am I, I don't know.

STAAL: Well, he feels he is responsible himself, really. [Telephone rings. Staal answers and talks]

MASSON: But even had Frits, aah –

CAMMELL: See, I mean you're not friends with any of these people and they were people really really close to you, that you –

MASSON: But they weren't, you know, in a way, I was intellectually – Eissler –

CAMMELL: O.K., that's what I need to hear, is that they weren't close to you.

MASSON: Well, they weren't close to me the way Bob or Frits is. I mean they are not people I would go and –

MALCOLM: Maybe that's part of the answer, that they wanted to be closer to you.

CAMMELL: Maybe that's it, and they feel, that's part of the hurt and, you know, that I feel much better about, that I can deal with.

MALCOLM: Did you tell Denise about – maybe you didn't, this morning I went to talk to Victor Calef, he's one of the people who hates Jeff now. And I asked him what's going on and he said that he felt rejected by Jeff, because, and then he told me some story about how they were going to do some work together on a psychoanalysis on Bernfeld, and Jeff just didn't want to do it anymore, he had bigger fish to fry and he was wounded. So it is personal, it's about personal things and I, I think we're agreeing that there's always something personal in these –

CAMMELL: Yeah, maybe people, maybe these people really, I don't know, you are charming, maybe they really –

MASSON: Fell in love? That's what somebody said about Eissler, that he was in love – That's what Furst said. Furst said to me, he said he behaved like a jilted lover.

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Tape 5 – Side B at 49:4-22

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MASSON: No, that's the weird – First of all Simone is very close to Denise, my girlfriend. She really likes her.

MALCOLM: Denise lives with you?

MASSON: No, Denise has her own house. Denise is another very strange person. She's a daughter of a very, very wealthy man who just lost all his banks. He owned this Fidelity Savings. Did you hear about how it was taken over by Citicorp? And he was Chairman of the Board. So, she was a very, very wealthy spoiled child who had to look after her whole family. Her mother was an alcoholic. Very interesting, very attractive woman, who now runs a boutique and a children's store and an exercise studio, and just got separated from a very wealthy developer husband. God knows how we every got together. I mean, no two people could be more dissimilar. She's real California, a strange person, very attractive, very warm, very loyal, with a horrible temper. She goes into temper rages at nothing, and the opposite, too, can be extraordinarily loving and wonderful. And

she fascinates me. She has no, no interest in anything intellectual. I mean, she's always spent all her life among rock stars and movie people and strange, but very together and very real. A real California, the best sort of example of what, you know, the American ideal in some sense. It's interesting to me.

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Tape 12 at 5

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CAMMELL: Isn't that what we're talking? I don't know.

MALCOLM: [???] talking about people, and Denise was saying how painful it must be for these old men back at the Institute or at the Archives, to think about this whole business, especially for Kurt Eissler, right? That he is wounded.

STAAL: I don't know anything about it, but of course I must say the fact that he gave this to a relatively unknown young person who came out of the blue speaks very well, that's a very nice – weakness, possibly, in his character. But I would say it's a strength.

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Tape 12 at 46-47

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MASSON: Huh? They work, she works by vibes.

CHILD: What do you work by?

MASSON: I work by speech, I'm a real talker.

CHILD: Talk, talk, talk, Chitter chatter.

MASSON: I like to hear something clearly spoken, and Denise only speaks in half-sentences.

CAMMELL: I'm, no, I'm much better. I really finish my sentences [???].

MASSON: Yeah, you're getting much better. When I first met Denise, you couldn't get more than six words out of her per hour. And they were generally like, "Yip," "No," "I mean like," and that was it. And, "You know what I mean?" And I'd say, "No," and she, "Well, thāt's it then." It's true. And there is a certain that, there is something *echt* California about that. A mistrust of speech.

CAMMELL: Nothing with California. It's nothing to do with California.

MASSON: No, but you do have a certain basic mistrust of speech.

CAMMELL: Mmmmm.

MASSON: Right?

MALCOLM: Well, as we all should really, because . . .

MASSON: Yeah, it can be too easy to talk. Oh, I'm not saying . . .

MALCOLM: I mean the relationship between words and thoughts is –

CAMMELL: It's just not fast enough, you know, it's very tricky.

MALCOLM: Well you probably don't think in words, right? You think in thoughts.

MASSON: I think in words.

MALCOLM: Yeah. You find out what you think after you finish –

MASSON: After I say it, that's right.

CAMMELL: Concepts, right, is that it?

MASSON: She knows and gives up on being able to express it.

CAMMELL: I can't get it out.

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Masson Deposition at 405:15-409:27

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MR. KENADY: Q. Coming now to the lunch with Denise in Berkeley, that's when Janet was invited to your home for lunch?

A. Yes. Actually she wasn't invited for lunch, we were supposed to finish before lunch and the conversation went past and I said I was unprepared for lunch, but I would see if there was anything to eat. Because she said she didn't want to go out.

"Could we just continue and have a simple bite in the house."

Q. Was her tape recording going?

A. Her tape recording was going.

Q. I see. Have you found the tape in that length?

A. I mean, I could, yeah. I haven't looked for it specifically. She shut if off during that lunch.

Q. I see. What was said during the lunch concerning Eissler and or – what, if anything concerning Eissler and Anna Freud?

MR. MORGAN: During the lunch?

MR. KENADY: Yes.

THE WITNESS: I don't know.

Why? What?

MR. KENADY: Q. Well, at what point in time, if at any point in time, do you recall Denise making a reference to Eissler and Anna Freud?

A. Oh, yes. Not at that time.

Q. All right. What time was it?

A. That was on Tuesday. This lunch was Sunday and the following Tuesday Denise and the children and I and Janet Malcolm were all in the car driving to Chinatown and that was the time that I was continuing remarks that I had been making to Janet Malcolm about Eissler.

And Denise was hearing for the first time the story of my being fired in real detail; she had not heard that before.

Q. I see. All right, continue please.

A. You mean continue with the narrative of what happened?

Q. Continue with what you recall the conversation being.

MR. MORGAN: That was taped, wasn't it?

THE WITNESS: No, that was not taped in the car. I must confess I don't remember it. However, I have read Janet Malcolm's notes, which presumably were taken right after that or at some point after that ride because she refers to the conversation that she then puts into her book.

So, all I have to go on are the notes that she has and my discussion with Denise about what was said and not said. And that conversation was continued and amplified at Frits Stall's house. And that is on tape. Unfortunately, not transcribed. Part of it had been transcribed by defendant and the other parts are still on tape and are irrelevant.

Q. What I'm interested in is whether you dispute that Denise did or did not say the words that she's quoted as saying at some point in the article?

MR. MORGAN: Which words are we talking about?

THE WITNESS: "You just don't feel it"?

MR. KENADY: Yes, it winds up with that. I think we all know what we're referring to, don't we, and maybe we better find out.

MR. MORGAN: Yes, let's make sure we're all –

MR. KENADY: Yes, I agree.

MR. MORGAN: I think it's 145 and 146 of the paperback.

MR. KENADY: Q. All right, do you want to have a look at –

A. I'm familiar with the passages, yes.

Q. Is it your testimony that the words quoted at the bottom of 145, Denise speaking:

> "Those old people – Eissler and Muriel Gardiner – I worry about them. I feel all their pain. Eissler knew he was playing with fire when he messed with you, but he couldn't help himself. You're charming – you affected people. You touched Eissler and you hurt him. I see him bearing the pain."
>
> "But you don't feel it, Jeff."
>
> "You just don't feel it. I worry about that."

Is it your testimony that Denise said those words or the equivalent in the car and also at Frits Stall's or –

A. No. What happened was – that's an amalgam. If you'll listen to the tapes, that part of that comes from – this conversation comes from Frits Stall's, identical phrases and parts of it come from notes that Janet Malcolm took, presumably from the drive over.

So, she's combined two separate conversations. And in her first – and the original manuscript, which is an exhibit, if you'll refer to it at this passage, you'll see that she places it there in the car.

And she says we were driving in the car on our way to Chinatown when Denise suddenly turned to Jeff and said – and then she gives more or less the same conversation, and then she has me say: "Denise worries too much," Masson said as he drove imperturbably on. So,

she's admitted that the conversation in her first version took place then in an automobile; and this version, it takes place over lunch, and in reality it took place in Frits' house. So, we have three different locations in reality.

MR. KENADY: I see.

MR. MORGAN: I think you'll find it's recorded in reality.

THE WITNESS: That's right. Most of this conversation is on tape taking place at Frits Stall's house, including the phrases, "Is that betrayal?" and so on and so forth.

And, "He knew he was playing with fire when he messed with you. He couldn't help himself, you're charming."

Those phrases come from a conversation recorded at Frits Stall's house.

MR. KENADY: Q. With respect to the conversations that you've just mentioned, did you say, "Denise worries too much"?

A. Absolutely not.

Q. Have you ever said that to Denise, that she worries too much?

A. Have I ever used the words "You worry too much, honey," something like that?

Q. Yes.

A. Yes, of course. I'm sure everybody has used those words at some point to somebody they love. But in

this context, impossible. Because she's expressing concern that I don't care about somebody's feelings, and I would never treat that lightly, make fun of it or dismiss it. It's not my nature to anybody.

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Cammell Deposition at 14:7-18:24

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Q. Do you remember at any time on this Tuesday voicing any concern about Jeff's treatment of Eisler [sic throughout passage] or of Anna Freud?

A. Yes.

Q. Would you tell us, please, what you said and – well, I'll start with that. What did you say?

MR. MORGAN: Well, you said any time on the Tuesday; is that right?

MR. KENADY: On the Tuesday.

MR. MORGAN: You're not restricting it to the drive in Chinatown or Chinatown?

MR. KENADY: I think I asked her –

Q. Well, tell us when it occurred?

A. After we left Chinatown, we were driving to Frits' apartment and before we got there the conversation turned to Dr. Eisler.

Q. How did it happen to turn to Dr. Eisler? Did you introduce the subject or did someone else?

A. I believe we were talking about my father and I drew some sort of correlation between Jeff's being fired

and certain things out of control, which can happen to people.

Somehow the conversation turned to Dr. Eisler. I believe it was in the context of my father, something.

Q. How did your father come into it or lead to Dr. Eisler? Were you talking about something that had happened to your father?

A. Yes. I was telling Janet about my father's – had been in business before and had lost his banks.

Q. I see. And your father's name?

A. A. C. Meyer, Jr.

Q. And could you spell Meyer?

A. M-e-y-e-r.

Q. And what were the names of the banks?

A. It was Fidelity Savings & Loan.

Q. Did you mention the amount of money involved?

A. I don't remember.

Q. A note from Janet Malcolm said he lost $60 million personally.

A. That's probably true, close to the amount.

Q. And did you probably say that in Janet Malcolm's presence?

A. I'm sure, yes.

Q. All right, fine. Now, I interrupted you when you were about to tell us what was being said about Eisler.

A. I asked Jeff what had actually happened. I hadn't heard the story about his break with Eisler. I had never heard it in any detail. I had heard snatchings of conversation between him and friends but we never really talked about what had actually happened. And he told me that – we started to talk about it just as we were getting to Frits's. So, when we got to Frits's, he started to explain to me the whole story of what had happened, and he told me that it was really outrageous that he had been fired for expressing beliefs where in Sanskrit he would hold opinions and he wouldn't necessarily lose a job over it. But among the analysts he – they just weren't interested in the truth of what he had to say. So, they just let him go and really threw him out, made him an outcast.

And so, he was explaining that to me, and I had been a little concerned over how they must be feeling.

Q. Who is "they"?

A. The people back East. Dr. Eisler and Merial [sic] Gardiner. And I asked him about that.

Q. And that lead [sic] to his explanation of having been fired?

A. Yes.

Q. As you understood it, for having the wrong ideas or a –

A. Well, for expressing his ideas.

Q. I see. All right, expressing his ideas?

A. Right.

Q. Why were you concerned with their feelings?

A. Well, I like Jeff a lot and I think he's a lot of fun to be around. And I imagine that a certain bright spot would have gone out of their life. So, I thought, you know, it must be kind of lonely for them, really.

I had read Janet's book, The Impossible Profession, and I imagined it must be a pretty isolated life, these analysts. So . . .

Q. All right, how did you happen to read Janet Malcolm's book, The Impossible Profession?

A. I was just curious. After she came out, I wanted to see it. Jeff had it in the house and I read it.

Q. I see. Did you read it before she arrived?

A. No, while she was there.

Q. While she was there you read it?

A. I didn't read the whole book, I was sort of running through it.

Q. So, it was in your mind that the life of an analyst may be somewhat lonely?

A. Yes, and very conformed to certain things and –

Q. Did Jeff make any response to your comment about the feelings of the, as you said, the people in the East, Dr. Eisler and the others?

A. Yes.

Q. And who was present when you were carrying on this conversation?

A. Erits and Janet and the two children.

Q. And Jeff?

A. Well, yes, he was giving me the answers.

Q. So, you made those remarks and then Jeff made some responses. Can you recall the response?

A. Well, he just gave me a very long explanation of what had actually happened. And I was – I asked him if Dr. Eisler was a friend and he said no, not really. I mean, you know, friends stand by you and I guess he, you know – he made me feel that he was a friend, a very superficial friend. He didn't come through in the crunch and it, you know – I really saw it then. You know, I didn't feel sorry for him any more.

Q. For him. And by him you mean Dr. Eisler?

A. Yes. You know, if he had stuck by him and said, look, I have to let you go but I really do understand why you had to do this, I, you know – but he didn't. He just stabbed him in the back.

Q. And your understanding was based entirely on what Jeff was telling you at that time?

A. Yes.

Q. You hadn't read Time Magazine earlier?

A. Well, I had read Time Magazine and I saw what Jeff had to say in Time Magazine. I mean, I had a superficial knowledge of what was reported and, you know, I really was on Jeff's side having also a superficial knowledge of the whole profession of analysis.

Q. At any time on this evening did Jeff make a comment to the effect that sometimes you worry too much?

A. No.

Q. Has he ever said that to you?

A. Yes. About one month ago in India I stuck my hand in X-ray machine going through the baggage and it's really the first time that he's gotten actually angry with me for worrying.

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Malcolm Deposition at 436:10-22

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Q. You are not saying that there is anything in these notes that you have that triggers in your mind that Mr. Masson said, "Denise worries too much," are you?

A. Yes, I am. That is just what I said.

Q. You point out the mnemonic aid that says to you that it is there.

A. It is the word – the trigger for me was the word "worry". She says here, "I worry about the future." She worries about their relationship. And I remember Mr. Masson repeatedly making these kinds of statements about Denise worrying too much. She would say these anguished things, imagining what had happened, and Mr. Masson would say she worries too much.

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Masson Deposition at 303:2-25

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And now that I see what Professor Ingles did, in fact tell her, I can understand his dismay. He did, indeed, give a very fair, balanced portrait of my positive and negative traits.

Q. And where do you learn what the portrait is that Ingles gave?

A. From a note from Janet Malcolm in one of her notebook discussions with Daniel H. Ingles. You have it as well.

Q. Did Ingles ever tell you that he had been misquoted by Janet Malcolm?

A. He was not quoted at all in the article.

Q. I guess it followed that he wasn't –

A. That's right. And that was his complaint, that he was not quoted. He felt that that would have helped me.

Q. What were the negative and positive traits that you had in mind when you made your previous answer?

A. Well, I don't remember the details now, but it's easy enough to check it right here. But he said something to the effect of, I consider him an outstanding scholar and he has a genuine gift for finding material that other people overlook.

On the other hand, he does have a tendency to work very fast and is careless of other people's feelings, and

tends to go through things rather quickly, and wants to find something more interesting of that.

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In the Freud Archives at page 67

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"[Eissler] was always putting moral pressure on me. 'Do you want to poison Anna Freud's last days? Have you no heart? You're going to kill the poor old woman.' I said to him, 'What have I done? *You're* doing it. *You're* firing me. What am I supposed to do – be grateful to you?' 'You could be silent about it. You could swallow it. I know it is painful for you. But you could just live with it in silence.' 'Why should I do that?' 'Because it is the honorable thing to do.' Well, he had the wrong man."

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Tape 9 – Side B at 42:5-27

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But it was wrong of Eissler to do that, you know. He was constantly putting various kinds of moral pressure on me and, "Do you want to poison Anna Freud's last days? Have you no heart?" He called me: "Have you no heart? You're going to kill the poor old woman. Have you no heart? Think of what she's done for you and you are now willing to do this to her." I said, "What have I, what have I done? *You* did it. You fired me. What am I supposed to do: thank you? be grateful to you? He said, "Well, you could never talk about it. You could be silent about it. You could swallow it. I know it's painful for you but just live with it in silence." "Fuck you," I said, "Why should I do that? Why? You know, why should one do

that?" "Because it's the honorable thing to do and you will save face. And who knows? If you never speak about it and you quietly and humbly accept our judgment, who knows that in a few years if we don't bring you back?" Well, he had the wrong man. Really, I mean, that's just not, not for me. And that's what Sidney Furst told me to do: "Jeff, don't make a fuss. Just be quiet about this. Don't sue anybody. Go home. Give Eissler some time. In a few years he's gonna be gone anyway. We Board of Directors, we'll give any anything you need. We're never going to cause trouble." It's not, you know, it's not, you know, my way of doing things. And it wasn't.

* * *

Tape 9 – Side A at 25:23-27:5

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MASSON: She [Anna Freud] never directly attacked me. On the phone she was quite gentle. I mean, she was honest. She said, "My father would never have wanted somebody like you living in this house," which is true I am sure. I understand that. She was upset. She felt that Eissler had lied to her, which he had – I don't know if he had, but he certainly hadn't been totally straightforward with her. Uh, she was upset because she knew that I was in possession of all these documents, and what would happen now? She probably felt that Eissler was making a mistake. At least, that's the impression I got. Then I agreed, right then and there, I told her, "I'm going to sue Dr. Eissler," and she didn't even object to it. And I did say, however, "I will, I will keep my promise not to publish all this material in such a way that will embarrass

you." I didn't want to say, "till you die." But I mean that was clearly –

MALCOLM: Yeah.

MASSON: – the implication.

MALCOLM: Yeah, yeah.

MASSON: And I kept that and to be quite honest, I must confess that I did give that up a few months ago on the grounds that I was told, and I don't want to say by whom because that really shouldn't be said, but I was told very – it's somebody who had heard it directly from her – that I should now be dropped from the Copyright. And I felt that that was unfair, that if she wanted to keep out of the whole thing, I could understand that, if she said, "Look, this is between you and Eissler or whoever, but I'm not involved, my relationship to you doesn't change," then I would retain, I would do for her what I said I would do.

MALCOLM: Um-hmm.

MASSON: But the minute that she, behind my back, started trying to get me off various committees and so on, that I didn't like and I felt that released me then from any obligation not to publish during her lifetime. And I was prepared, in fact, to go ahead with this publication in Germany with Suhrkamp, uh, no matter what effect it would have on her. And I knew it would have a devastating effect.

MALCOLM: But as it happened, she died.

MASSON: As it happened, she died.

* * *

———

Malcolm, Handwritten Notes

It was wrong of E to do that. He was constantly putting all kinds of moral pressure on me)

"Do you want to poison A.F.'s last days. Have you no heart? You're going to kill the poor old woman. Think of what she has done for you and you're now willing to do this to her.

What have I done? You're doing it. You're firing me. What am I supposed to do, thank you? Be grateful to you?

He said, well you could never talk about it. You could be silent about it. You could swallow it. I know its painful for you. But you could just live with it in silence. Fuck you. Why should I do that?

"Because it's the honorable thing to do, and you'll save face, and who knows, if you never speak about it, and you quietly and humbly accept our judgment, who knows if in a few years we don't bring you back. Well he had the wrong.

* * *

Malcolm Deposition at 445:5-23

* * *

[Q] Is it your testimony that is what Masson told you?

A That is what Mr. Masson told me.

Q Would you agree that the way you have written it would convey to the readers that mr. [sic] Masson was saying to you that he was not going to do the honorable thing?

MR. KENADY: Who is saying "The honorable thing"?

MR. MORGAN: Masson.

MR. KENADY: I think Eissler is saying it.

MR. MORGAN: No, Mr. Masson is saying he is not going to do the honorable thing.

A That is Dr. Eissler's comment.

Q Listen to my question. Are you not conveying to the reader by the way you have put those words together that Mr. Masson is saying I'm not going to do the honorable thing?

A Absolutely not. That is a misreading by you, Mr. Morgan, if that is what you believe.

* * *

Malcolm Deposition at 448:11-450:13

* * *

Q Mr. Masson was referring to Dr. Eissler's comments that if he doesn't speak about it and is quiet and humble, that maybe he would come back, get his job back; isn't that right?

A Well, the way I read it, when Mr. Masson says, "Well, he had the wrong man," he is referring to Dr. Eissler's comment that he be silent and that he would

swallow it and would live with it in silence. That was my interpretation, rather than he was somebody who was not honorable. That was my intention in writing this paragraph, as far as I can reconstruct my thinking

Q Was there some reason why you did not tell the reader that Mr. Masson said that Eissler said, "If you never speak about it and if you quietly and humbly accept our judgment, who knows, that in a few years, if we don't bring you back"?

A Well, I can't remember every decision to, you know, to not use the entire transcript, but I had – whatever reason I had for doing that, it was certainly not to impugn Mr. Masson's honor.

Q Will you agree, though, Mrs. Malcolm, that a reader reading it the way you wrote it could conclude that Mr. Masson is saying that Dr. Eissler had the wrong man if Dr. Eissler expected him to do the honorable thing?

A That is not my reading of it, no.

Q That is not my question.

MR. KENADY: She is entitled to tell you that.

MR. MORGAN: She is entitled to tell me that, but that is not my question.

A Ask me again.

Q Would you agree that a reader, reading your article, could conclude that when you wrote that Mr. Masson said, "~~He~~ had the wrong man," it was responding to Dr. Eissler's statement that it was the honorable thing to do?

A Your question is, could a reader come to that conclusion?

Q That's right.

A In my opinion do I think that a reader could come to that conclusion?

Q That is what I am asking you.

A Well, let me think about that. I think the reader would not conclude that.

Q Let's now go to page 117 of Exhibit 15.2.

Before I get to that, there is one more thing. Mrs. Malcolm, when you eliminated those words, you knew you were eliminating them, didn't you?

A I did.

Q This was done deliberately by you?

A Yes.

* * *

New York Times Book Review
Portrait of Masson July 8, 1984

To the Editor:

In my book "In the Freud Archives" I refrained from commenting on the frailties of its central character, Jeffrey Moussaieff Masson, and allowed him to speak for himself, in direct quotation. After reading Mr. Masson's comments in your Letters column (June 24), in which he attacks my integrity, I am obliged, in self-defense, to break my silence and point out that be suffers from a very poor memory.

Mr. Masson writes that the portrait of him in my book is based on "the few short hours Miss Malcolm and I spent together." The portrait, in fact, is based on more than 40 hours of tape-recorded conversations with Mr. Masson, which began in Berkeley, Calif., in November 1982, during a week of interviews, and continued on the telephone over the following eight months. In addition, it draws on interviews with 23 of Mr. Masson's friends, colleagues and professional acquaintances, with whom Mr. Masson himself suggested I speak in order to deepen my understanding of him. In his letter, Mr. Masson called my book "distorted." Any distortion I may have committed was a distortion by omission. Many of things [sic] Mr. Masson told me (on tape) were discreditable to him, and I felt it best not to include them. Everything I do quote Mr. Masson as saying was said by him, almost word for word. (The "almost" refers to changes made for the sake of correct syntax.) I would be glad to play the tapes of my

conversation with Mr. Masson to the editors of The Book Review whenever they have 40 or 50 short hours to spare.

JANET MALCOLM
New York

Shawn Deposition at 27:4-28:4

• • •

I want you to tell me now what checking was done to satisfy anybody that Mrs. Malcolm was quoting accurately.

A I – I am the wrong person to ask that, I'm afraid.

Q Then all you can tell me is what you do or don't do?

A All that I know is that I was told that everything that was quoted from Mr. Masson – or is it Dr. Masson?

Q Mr. Masson is fine.

A Everything that was quoted was on tape, and that was my understanding from the very beginning.

Therefore, it made the checking much simpler from my point of view because, well, there were the tapes. she [sic] said they were all on tapes. If she told me that, I would know, since I trust her, that is the truth.

So, on quotations, I would say that if she told the checkers what she told me, that it is on tape, that would be the end of it.

Q Is your best recollection that she told you that everything was on tape?

A Yes, she did tell me. She said that she had everything on tape.

• • •

Malcolm Deposition at 188:2-6

• • •

Q Have you ever made that representation to anyone?

A That all of my quotes were on tape?

Q Yes.

A No.

• • •

Gottlieb Deposition at 46:8-18

• • •

Q Were you aware back in December of 1984 that Mr. Masson had contacted a lawyer who had called *The New Yorker Magazine* on his behalf regarding the piece that was published?

A I cannot remember at what date I first heard that.

Q But you did become aware of that fact?

A At some point.

Q Would you agree that you became aware of it before the book was published by Knopf?

A Yes.

• • •

Gottlieb Deposition at 52:10-17

• • •

Q Sure. Did you have a conversation with a lawyer or lawyers regarding Mr. Masson's claims before you decided to go ahead with the publication of the book?

A I would certainly have had a conversation about whether we felt secure in proceeding to publish after he had made his claims. I cannot remember whether I discussed what those claims were.

• • •

Gottlieb Deposition at 68:10-22

• • •

Q Were you aware that there was some complaint made regarding Janet Malcolm's conduct in the writing of the prior book or the piece?

A I don't know that there was a complaint about her conduct. I know that there was –

Q Were you aware that there was some complaint made against Janet Malcolm?

A Yes.

Q Did you talk to Janet Malcolm about the complaint?

A Undoubtedly I did.

Q Can you recall any of the discussion?

A No.

• • •

Gottlieb Deposition at 77:6-17

Q One of the things that I am not certain I feel that I have clarified. Are you able to tell me when was the first time that you becames [sic] aware that there was some dispute –

A I cannot remember the date.

Q – dispute arising?

A I cannot remember the date.

Q You had heard about Mr. Masson's attorneys calling before the publication of the book, hadn't you?

A I probably heard about it soon after it took place.

• • •

Galleys at page 2

• • •

Recently speaking of his first meeting with Masson (whose letters he now returns unread), Eissler said bitterly, "I realize now that there was something already wrong.

He doesn't answer Masson's letters, but he hasn't returned any (Handwritten in margin)

• • •

Galleys at page 38

• • •

She is Polish. She was in the Warsaw ghetto as a child. When we met, in Toronto, she was a very successful film producer for Canadian television. I persuaded her to quit her job and to study philosophy at the University. I got her interested in psychoanalysis, ~~I got her to go into analysis.~~

"a . . . Jew" (Handwritten in margin surrounding "Polish") –

"writing about" (Handwritten in margin before "psychoanalysis")

• • •

Galleys at page 39

• • •

She is Polish. She was in the Warsaw ghetto as a child. When we met, is Toronto, she was a very successful film producer for Canadian television. I persuaded her to quit her job and to study philosophy at the University. I got her interested in psychoanalysis, ~~I got her to go into analysis.~~

"a . . . Jew" (Handwritten in margin surrounding "Polish")

"writing about" (Handwritten in margin before "psychoanalysis")

Where did this come from? (Handwritten in margin)

• • •

Franklin Deposition at 53:2-25

* * *

Whose writing is that?

A In red?

Q Yes.

A Gardner Botsford's handwriting.

Q What is he asking about there?

A He is asking me where I got that information from.

MR. KENADY: What is that information?

THE WITNESS: Well, Janet had written, "She is Polish." I changed it to, "She is a Polish Jew."

There is another change further down on the page. Janet wrote, "I got her interested in psychoanalysis. I got her to go into psychoanalysis." I changed it to, "I got her interested in writing about psychoanalysis, and for many years we worked together and read the analytic literature, et cetera."

* * *

Tape 11 – Side A at 19:13-20

* * *

MASSON: Well, I mean, I suppose in some sense I am. But, I mean, I'm certainly interested in stuff like what I.F. Stone was doing –

MALCOLM: Yeah.

MASSON: – about the Vietnamese war. I thought that was magnificent. Just great stuff. And that was journalism at it's [sic] best. And I think your thing about the impossible profession is the same kind of thing.

* * *

Tape 4 – Side B at 50:21-24

* * *

[MASSON:] Because I think you're right to, to – One, one doesn't want to avoid either the personal side about me and my whole life nor the side connected with my discoveries. Um, you know, there is no reason to stay away from anything, really

* * *

Tape 1 – Side A at 28:14-29:18

* * *

MALCOLM: I mean, what was the idea of your su:t?

MASSON: Well, uh, that I was wrongfully fired, and fired in order to suppress certain documents.

MALCOLM: But I mean –

MASSON: That there was a tort.

MALCOLM: – I thought you had, you had to show them that you had been somehow damaged in some way, to prove a case?

MASSON: Sure, I mean, they did damage my reputation.

MALCOLM: I see, so that was the case.

MASSON: I mean, I became a *persona non grata* –

MALCOLM: Yeah.

MASSON: – in the anal – Which is true. In the analytic community. Can't get a job. Not even in the university, and it's weird to see how the university and analysis, this whole thing – they all sort of hang together. "Well," you know, "we're really very interested in your ideas, but you're very controversial at this time and we think it would be better to wait until – It's really, I can't get a job. I mean –

MALCOLM: Now, you told me that you were just fired yesterday from your job here at the university, too?

MASSON: No.

MALCOLM: You lost your job or – ?

MASSON: No, no, I resigned from my position at Toronto. I was professor of Sanskrit. And I resigned to take on the position with the Archives. And I couldn't get it back.

MALCOLM: But what about your work with the University here?

MASSON: It's honorary. I don't get a salary. I have an honorary position in Sanskrit [???] but I don't get a salary. But I do lectures once in a while with some students.

MALCOLM: So, so you, you live off your publications?

MASSON: My future publications.

• • •

Tape 13 – Side B at 44:5-9

• • •

MASSON: Also, how would I live for a year? I mean this way I've got a contract because I've got a book promised, but if I said I need another year, there's nobody going to give me a grant. I can't get a job. I can't teach in the university uh – and I can't see patients. So what would I do?

• • •

Tape 3 – Side B at 59:1-9

• • •

MASSON: That's true, yeah. No, I think that the reason you give me is absolutely correct. That you don't want to be influenced by anything I'm feeling. You're right. I mean, why should you? I should have no control over what you say because then it's not honest. I, I think, you know, that's absolutely true. But, if in, if I were in your shoes, I would say: Well, sure, I'm not going

to change a single thing that I feel because of what you feel. But here's what I'm saying. Now you can do what you want about it.

* * *

Tape 3 – Side B at 60:6-62:28

* * *

MASSON: That's right. I know that, you do – I really do have faith in this. I really believe that you're going to write something very interesting, that I will not agree with all of it but I will agree with lots of it, and that I will think it's great.

MALCOLM: Well, that's what I hope.

MASSON: I'm sure of it and I'm not, you know, I'm not an ungenerous person that way. I mean, I'm not like – just because you don't agree with me, I'm not going to say: Oh, this is no good. I really will acknowledge it.

MALCOLM: Yeah.

MASSON: I just got, suddenly got worried from that letter and thought: What if this really is about Masson and Swales? That would be horrible.

MALCOLM: Yeah.

MASSON: Because it wouldn't correspond to the truth. Not because it's, you know, that's all.

MALCOLM: I understand. But I'm glad we've had this, this talk about Swales. Because, you know, I've been sort of I – I hesitated to press you about it because I knew it was an unpleasant subject for you, but it was a sort of a bit of a lacuna about –

MASSON: Sure.

MALCOLM: – your feelings were so –

MASSON: Well, look, don't hesitate to press me about anything. I mean, there should be nothing – I really don't feel that anything in my past should be hidden; there is nothing, you know, I mean, there are a couple of details about my relationship with Eissler and Muriel Gardiner that really, because of them, I could not reveal. Obviously –

MALCOLM: Of course.

MASSON: But that's only because of them. I, you know, would have absolutely no hesitation in, you know, I feel that everything I've ever done and talked about or thought or believed should be open. I really strongly believe that.

MALCOLM: Yeah, yeah.

MASSON: But I can't, you know, and to the extent that it doesn't harm anyone, I'm perfectly prepared to say anything –

MALCOLM: Yeah, well, I, I –

MASSON: – including my sexual feelings for you.

MALCOLM: [laughs]

MASSON: But I'm, I'm, I you know, I can't obviously talk about things that would hurt Eissler or Muriel Gardiner. I mean, I told them once I would never do that, not even in my lawsuit, and I wouldn't do it with

you and I won't and, you know, because that would hurt another person.

MALCOLM: Of course, yeah, and I, I mean, this is not the sort of material I would be interested in anyway.

MASSON: Obviously not, no. No, but I feel I've certainly probably told you more than I've ever told anyone else, you know, except Terri, when I was living with her, about the sort of the things I've thought and felt and that have happened to me and so on. And I think that's right. You know, I think you've also, I mean, quite apart from the fact that I like the way you write and like the way you tell things, I also think you do have a certain remarkable listening gift. You know, you have a slightly skeptical air to your listening which is encouraging.

MALCOLM: Um-hmm.

MASSON: I mean, it encourages one to talk and I like that.

MALCOLM: Yeah, well I think we have a good sort of a –

MASSON: Yeah, I do. I think we have a good relationship and I really don't want it disturbed, and I'm sorry now that I ever talked to what's-her-name? But I, I think it was a mistake in retrospect, but it's one that's over and I can't do anything about. But I really feel that I've committed myself to you and, I mean, there is nobody that knows more about this than you. Nobody knows anything, really. And, uh, so I have a stake in this as well. I really want this to be as complete –

MALCOLM: Yeah.

MASSON: And I'm sure it will. And I'm sure it's going to interest a lot of people; it's going to be great. So, you mustn't hesitate; if you think there's something that you feel that there is some sort of secrecy about, please feel comfortable –

MALCOLM: Yeah, well, I didn't feel, certainly "secrecy" is never the right word about anything that –

MASSON: No but, if you feel any hesitation in me in areas that you'd like to know more about, God, just ask.

• • •

Tape 8 – Side B at 45:23-25

• • •

MASSON: I really did have the fantasy two or three days before that: "Why doesn't Janet Malcolm from *The New Yorker* call me?"

• • •

Tape 8 – Side B at 46:19-21

• • •

MASSON: – "she's saying all these wonderful things." You know, it will have a certain tone of objectivity. Uh, it will have a certain, even a slight negative tone –

• • •

Tape 8 – Side B at 47:14-24

• • •

MASSON: No, I realize that but you see there is an advantage to that. If you saw it the way I saw it,

there's no way you could write about it in a way that would be anything but an apology, *pro vita mia*, which is not what is needed now. I can do that myself. I see it my way. [laughs] I can write my own book and I can write it with a lot of verve and a lot of passion and get everything straight. It won't have the same effect. Your slight detachment and slight ironical tone, or however it's going to come out in the book, is good, I think. Because it allows the reader to make up his own mind, as long as you get the story straight.

* * *

Tape 4 – Side A at 8:14-9:5

* * *

MASSON: Why would I ever sue either Eissler or *The New Yorker*? I mean, isn't he aware that he fired me from a job with no reason whatsoever. I mean, he can say anything he wants about me.

MALCOLM: Of course.

MASSON: I don't care what he says.

MALCOLM: Well, he was very interested in what you, in what you had said about him, and I said, "Well, let's, let's talk about it," and then I, then we left it that you first get the letter so I, after my phone conversation with the lawyer, I, I wrote Eissler a note.

MASSON: Yeah.

MALCOLM: Telling him what the lawyer had said and, and then telling him that it would be to his interest to, to speak to me and to hear what you had said so that he could give his side.

MASSON: Yeah, well, if you want, I mean, you know, if it comes to that and you need some letter from me saying that I'm not going to sue either *The New Yorker* or Dr. Eissler on the basis of what you write, I'll give it to you. I don't care.

* * *

Masson Deposition at 23:5-24:26

* * *

Q. What about during the passage from the Claremont to Chez Panisse, how was that accomplished?

A. In my car there was no tape recorder.

Q. There was no tape recorder?

A. No.

Q. You didn't maintain silence, did you?

A. No, we chatted.

Q. I take it there were very few silent periods when you and Janet were together?

A. That's correct.

Q. Did you also take walks with Janet Malcolm while you were in Berkeley?

A. I don't believe we did, no.

Q. Did you ever take walks with Janet Malcolm anywhere that you recall?

A. Well, when you say "take walks," we certainly walked from place to place.

Q. I had in mind what I would guess you would call a recreational walk where you'd just go around the block or something without any definite destination in mind except perhaps to go and return.

A. No, I don't believe we did.

Q. Do you remember walking with Janet Malcolm then –

A. Well, certainly we – I'm sorry, I should wait.

Q. – (continuing) while you were both in Berkeley?

A. Yes, we had one stroll with Denise and my daughter and Denise's daughter in Chinatown for a couple of hours. We had dinner in Chinatown, and then we wandered about, and that was all together.

Q. All right. Was Janet toting the tape recorder?

A. Yes, she was.

Q. Was it continuously on while you were going to Chinatown in the car?

A. No.

Q. Was it continuously on while you were having dinner in –

A. – (continuing) in Chinatown, no.

Q. It was not on?

A. No.

Q. Was it on while you were walking around the vicinity of Chinatown?

A. No. No, she explained to me, I think in the Claremont that she intended to tape every formal conversation that she and I would have together, and that there would be, I believe, a few other occasions if other people were present that she would record as well.

* * *

Masson Deposition at 47:4-8

* * *

Q. Berkeley. So, there were occasions when you were speaking together in Berkeley other than when you were riding in an automobile with other people when the tape recorder was not on?

A. That is correct.

* * *

Masson Deposition at 65:4-8

* * *

Q. Over the course when you had been with Janet Malcolm in Berkeley, did you observe her taking notes as opposed to turning the tape recorder on and off?

A. I did not, no. But evidently she did take notes because she's handed some of them over to us.

* * *

Berkeley, May 17, 1983

Dear Janet: . . .

Denise and I would like to thank you, and Gardner, for a wonderful stay. You were both very kind and we enjoyed it enormously. I found it particularly interesting, once again, to see our interaction. It is curious how different our views are, and yet, how at the end of things, or after long talks, we come to understand one another better. I come up against your "dispassion" or objectivity, or whatever you want to call it. I cannot understand why you don't become more exercised, and you wonder what all the fuss is about. I can't believe your coolness is genuine, and you are suspicious of my engagement. You saw why I wouldn't like the Eissler book, but for you a few sentences would suffice. I was all in a passion. Is it just a question of professions? Is it just an exterior difference? I really don't know. But it certainly makes things less than dull.

I have been thinking about your question, what I want (vis a vis Eissler) and I remember telling you that I did, in some sense, want vengeance. But I realize now that I used the wrong word. That is not what I meant at all. What I meant was that I wanted vindication, that is, I wanted Eissler (or anybody else) to see what the real issues were about. If he wanted to fire me, he was free to do so, but not over something, that really wasn't at issue. Eissler could care less, in the end, about the profession of psychoanalysis, or publicity, or even therapy. Something much more critical was at issue for him, and over that he was willing to give up even a close friend. If he could say that openly, then I would have no quarrel. What made me

angry, and still does, is the hypocrisy. Pretending it is a scientific issue when it is a political one. Pretending I did something dishonest when I simply talked about what was true.

The Schur material I have is all in German. I can't lay my hands on any Ingalls articles, but if it is important, let me know, and I will find them in the library (probably easier forme [sic] to do than you). I am sending you the book we edited in his honor, which gives the list of his publications. Also three books I wrote, a long time ago. Sending it all off today – you should have it soon. . . .

* * *

Masson Deposition at 65:24-66:27

* * *

A. Well, it was breakfast time. I came down a little bit early the first day because Janet Malcolm had given me a book that Eissler had just written and published, which I had not yet received. It had just come out that week. She had a copy and was curious to tell how I would respond to it.

So, she gave it to me the evening before and I spent most of the night staying up reading that book because I was fascinated.

And I went down early, since I had slept very little, and I was very keyed up and wanted to talk about this book.

So I went down early and Janet Malcolm was there starting to get breakfast ready. So, she asked me what I

was doing up so early and I said, "Well, I'm so upset about this book I'd like to talk to you about it."

So, we sat down at the breakfast table, had a fairly expansive half an hour to an hour discussion about the book, and then Denise joined us, and then Gardiner Botsford.

And Denise said, "What's all the fuss?"

And I said, "Well, we're arguing about this book, and I can't understand why Janet Malcolm is not more excited about it, and she can't understand why I am so excited."

Q. What was the book?

A. It was called Victor Tausk Suicide, and it was Eissler's second book on the topic.

Q. And would you spell Tausk?

A. T-a-u-s-k. And I felt –

MR. MORGAN: Wait a minute. He just wanted to know what the book was.

MR. KENADY: Q. Have you given us the title?

A. It was called Victor Tausk Suicide.

Q. How long a book was it?

A. 200 pages, 250 pages.

* * *

Masson Deposition at 67:8-68:19

* * *

Q. Were you in what could be called an exuberant mood at this time knowing that your book was going to

be published finally in English by a well-known publisher and that you had been chosen to address all of the sales people?

A. I knew well before that that the book was going to be published.

Q. But you said you were invited to address a gathering at Farrar. What was the gathering and the purpose of your address?

A. It was a sales conference.

Q. That's what I thought.

A. And these are the salesmen who sell the book.

And at this stage, they were now going to go out and attempt to sell the books, and Farrar, Straus and Giroux wanted me, because it was a fairly complicated story, wanted me to explain to them the significance of this book so they could explain it to book sellers. I was not particularly exuberant, no.

Q. Well, it was a meeting where you exhorted the troops in a way, wasn't it?

A. Well, they did that. What they wanted to hear from me is they wanted to hear something of the discovery process so that they could then relay it.

Q. And were there predictions of what its success would be?

A. They thought it would do quite well, yes.

Q. What would that have meant in terms of money to you? I'm just trying to get an appraisal of what you understood from "quite well."

A. Well, I understood that they were printing at that point 35,000 copies. So, that would have meant a considerable amount of money for me if they were all sold and if they went into a second printing, which they certainly hoped to be able to do fairly quickly.

And they were hoping that they would sell it to book clubs and so on. so [sic], they were optimistic about the book, although they recognized that it was a book for the general public not for analysts.

Q. When you say "a considerable sum," what sum do you have in mind?

A. Well, if all 35,000 copies sold, I would have gotten $50,000.

* * *

Malcolm Deposition at 56:5-57:19

* * *

Q How would it be determined as to what articles you would write for *The New Yorker Magazine* in the eighties?

A I would speak to Mr. Shawn about them and he would either say, "Yes, that's fine, go ahead," or he would say he didn't think that was a good idea.

Q We were talking about during the 1980's. You would go to Mr. Shawn and you would suggest a particular article you wanted to write on; is that correct?

A Correct.

Q In the 1980's, how many staff writers were there for *The New Yorker Magazine*?

A I have no idea.

Q Are we talking about more than ten?

A Yes.

Q Did other staff writers operate in the same manner as you, in that they would go to the editor and say, "I would like to write on a particular article"?

A As far as I know, they did.

Q How many articles would you write a year in let's say 1980, '81, '82 for *The New Yorker Magazine*?

A No more than one; sometimes it took me longer than a year to prepare and write an article.

Q How was your compensation determined? Were you paid by the article or on a regular monthly basis?

A I was paid when I finished the article.

Q Were you paid a particular amount per article?

A Yes.

Q Did it vary with the articles?

A Yes.

Q How was the compensation determined?

A By the whim of the editor.

Q In other words, he would look at an article and say that, "I think the article is worth X amount of dollars"?

A Presumably.

* * *

Malcolm Deposition at 64:19-65:8

* * *

Q As a staff writer for *The New Yorker Magazine*, are you required to write at least one article a year?

A No.

Q The determination is solely yours, whether you do or do not write?

A Correct.

Q Is there any distinction as far as *The New Yorker Magazine* is concerned between being a staff writer or a free-lance writer?

A No – I don't know what it is.

Q Are you required to spend any amount of time per year on working on articles for *The New Yorker Magazine* in order to be a staff writer?

A No.

* * *

Franklin Deposition at 43:14-18

* * *

A Well, I am sure I came to the conclusion in my work on this piece that there was nothing suspicious about that. It seemed like a reasonable thing from the kind of letters and documents that I was looking at while I was checking the piece.

* * *

Franklin Deposition at 61:2-9

* * *

[W]e would have changed that kind of thing, but no, he never – he, at the end of our conversation there was nothing left unresolved and he never complained to me one single time about any inaccuracies.

Q In other words, he did not say to you, "If she got that wrong," meaning about his wife, "will you please check the other things she says about me?"

A He absolutely never said that to me.

* * *

Franklin Deposition at 64:17-23

* * *

Q At or about that time or during that conversation did Mr. Masson ask you to read the other quotes to him?

A You mean all of the other quotes in the piece, did he ask me to read them?

Q Yes.

A No.

* * *

Masson Deposition at 292:1-25

* * *

The Michaels' report to you, did it mean that Gotlieb [sic] had admitted that there were falsehoods?

A No.

Q Of which he was aware?

A No, not at all.

Q In the book or article?

A Only that he knew that I claimed that.

Q I see.

A And I suspect he believed Janet Malcolm. He probably asked her – after all, they see each other.

MR. MORGAN: Don't do all that speculating.

MR. KENADY: Q. So, we are not to understand that the report from Professor Michaels to you conveyed in any sense an admission by Mr. Gotlieb [sic] that he had knowingly published a falsehood, but you –

A Certainly not.

Only that he knew – maybe I missed – what I meant to say when I said, "I know, I know," he didn't mean that he knew that the article contained falsehoods, he meant, "I know that Masson disputes the accuracy of the quotations, I know about that."

Q I see.

A No, certainly I don't believe Mr. Gotlieb [sic], if he knew that they were false, would have gone ahead and published it. I think he was negligent in not finding out, but not dishonest.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[686 F. Supp. 1396]

[No. C-84-7548 EFL; August 17, 1987]

JEFFREY M. MASSON,
Plaintiff

v.

THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM
Defendants

ORDER GRANTING SUMMARY JUDGMENT

This document appears as Appendix B to the Petition for Writ of Certiorari.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, vs. THE NEW YORKER MAGAZINE, Inc.; ALFRED A. KNOPF, Inc.; JANET MALCOLM, Defendants.	No. C-84-7548 EFL JUDGMENT FILED AUG 17 1987

Pursuant to the Order Granting Summary Judgment of this date, the Court hereby renders judgment in favor of the defendants with each side to bear their own attorney's fees and costs.

DATED: August 14, 1987.

/s/ Eugene F. Lynch
EUGENE F. LYNCH
United States
District Judge

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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, vs. THE NEW YORKER MAGAZINE, Inc.; ALFRED A. KNOPF, Inc.; JANET MALCOLM, Defendants.	No. C-84-7548 EFL NOTICE OF APPEAL SEP 11 1987

Notice is hereby given that JEFFREY M. MASSON, the Plaintiff above named hereby appeals to the United State Court of Appeals for the Ninth Circuit from the Summary Judgment entered in this action in favor of the Defendants on August 17, 1987.

Dated: September 10, 1987

/s/ Charles O. Morgan
CHARLES O. MORGAN, JR.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[895 F.2d 1535]

[Nos. 87-2665, 87-2700, August 4, 1989]

[As modified February 15, 1990]

JEFFREY M. MASSON,
Plaintiff/Appellant/Cross-Appellee,

v.

THE NEW YORKER MAGAZINE, INC.,
ALFRED A. KNOPF, INC., AND JANET MALCOLM
Defendants/Appellees/Cross-Appellants

OPINION

This document appears as Appendix A to the Petition for Writ of Certiorari.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Nos. 87-2665, 87-2700; February 15, 1990]

JEFFREY M. MASSON,
Plaintiff/Appellant/Appellee

v.

THE NEW YORKER MAGAZINE, INC.;
ALFRED A. KNOPF, INC.; JANE MALCOLM
Defendants/Appellees/Appellants

ORDER

This document appears as Appendix D to Petition for Writ of Certiorari.

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEFFREY M. MASSON, Plaintiff, v. THE NEW YORKER MAGAZINE, INC.; ALFRED A. KNOPF, INC.; JANET MALCOLM, Defendants.	No. 84 7548EFL COMPLAINT FOR DEFAMATION AND INVASION OF PRIVACY [JURY TRIAL DEMANDED]

Plaintiff complains and alleges as follows:

JURISDICTION

1. Plaintiff JEFFREY M. MASSON ("Masson") is a citizen of the State of California who resides in this judicial district.

2. Defendant THE NEW YORKER MAGAZINE, INC. ("The New Yorker") is a New York corporation with its principal place of business at New York, New York.

3. Defendant ALFRED A. KNOPF, INC. ("Knopf") is a New York corporation with its principal place of business at New York, New York.

4. Defendant JANET MALCOLM is a citizen and resident of the State of New York.

5. This Court has jurisdiction over the subject matter of this action in that the Plaintiff and Defendants are of diverse citizenship and the amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

6. Venue is proper in this Court because Plaintiff resides in this judicial district and the claim which forms the subject-matter of this action arose in this judicial district.

FIRST CAUSE OF ACTION

(Against Defendant MALCOLM for Defamation)

7. Plaintiff JEFFREY MASSON is a Sanskrit scholar and psychoanalyst who formerly served as projects director of the Sigmund Freud Archives. Over the course of several years, beginning around 1972 and continuing until around 1982, MASSON became the associate and confidante of persons prominent in the international psychoanalytic community, among them Dr. Anna Freud, Sigmund Freud's daughter, and Dr. Kurt Eissler, Secretary of the Sigmund Freud Archives. MASSON's association with these and other persons and his subsequent appointment as projects director of the Freud Archives gave him access to previously unpublished documents

pertaining to the history of psychoanalysis, including much of Sigmund Freud's personal correspondence.

8. Over the course of many years and particularly after he gained access to Freud's personal correspondence in his capacity as projects director of the Freud Archives, MASSON developed an original and (to members of the psychoanalytic "establishment") highly unorthodox theory concerning the origins of psychoanalytic thought. In particular, MASSON's research focused on the historical prominence of the so-called "seduction theory".

9. MASSON's research gradually revealed that Freud did not abruptly abandon the "seduction theory" in the Autumn of 1897 as previous scholarship had indicated. MASSON uncovered clear and previously undisclosed evidence of Freud's ongoing interest and belief in the "seduction theory", which holds that neurotic personality disorders originate in actual sexual abuse during childhood. MASSON's research further revealed that Freud turned his back on the seduction theory in favor of a theory more pleasing to his colleagues' sensibilities. Freud's subsequent theory held that neuroses originate in unconscious fantasies and not in actual sexual abuse at the hands of a parent or other authority figure.

10. MASSON's scholarly research led him to conclude that Freud abandoned the "seduction theory" not as a result of clinical observations, but to further his career and to placate his colleagues.

11. MASSON published his views in 1984 in a book entitled THE ASSAULT ON TRUTH: FREUD'S SUPPRESSION OF THE SEDUCTION THEORY.

12. On information and belief, MASSON's views were so unorthodox that they were perceived as a threat to the psychoanalytic "establishment." MASSON is informed and believes that, for this reason, members of this establishment and persons with connections thereto had a vested interest in discrediting MASSON and his views.

13. Thus, when Defendant MALCOLM, a writer with close ties to the psychoanalytic "establishment," wrote an article concerning MASSON for THE NEW YORKER which is the subject matter of this complaint, she focused it not primarily on MASSON's scholarship or the research behind his work, but instead primarily on MASSON's personal life. During the later part of 1983, MALCOLM traveled to MASSON's home in Berkeley, California and conducted a series of interviews with him, which were tape-recorded and which formed the basis for the aforesaid article. Defendant MALCOLM spoke to other persons personally and professionally associated with MASSON, and published her purported findings in a novella-length article in successive issues of THE NEW YORKER, the first of which was dated December 5, 1983. Defendant THE NEW YORKER has represented to counsel for Plaintiff that the first publication of such article occurred on November 30, 1983. MALCOLM subsequently published said article in substantially identical form in book format under the title IN THE FREUD ARCHIVES, published by Defendant KNOPF.

14. Defendant MALCOLM's article in THE NEW YORKER, subsequently republished in book form by KNOPF, expressly purported to be based on many hours of tape-recorded interviews with MASSON as well as on

the author's personal impressions and independent research. Many parts of the article (subsequently published in book form) purported to include extensive verbatim quotations from MASSON. In fact, many of the so-called "quotations" failed to correspond to the tape-recorded words of MASSON and were quoted out of context. Thus, Defendant MALCOLM's quotations constituted misstatements by Defendant MALCOLM of what MASSON had actually said during his interviews with her or constituted willful distortions of what MASSON had intended as the meaning of his statements. On information and belief, Defendant MALCOLM knowingly and deliberately failed to adhere to the tape-recorded record of her interviews with MASSON. On information and belief, Defendant MALCOLM instead knowingly and deliberately misstated MASSON's words and took his words out of context in the attempt to portray MASSON, using words purportedly out of his own mouth, as unscholarly, irresponsible, vain, lacking in personal honesty and moral integrity, and thus motivated by personal considerations in his professional dispute with members of the psychoanalytic establishment and therefore unsuited for any academic or professional position requiring personal responsibility, integrity and credibility. On information and belief, Defendant MALCOLM also sought to enhance the gossip appeal of her own story, thereby increasing its marketability and profit potential, by making MASSON appear to impugn his personal and professional integrity with his own words.

15. Defendant MALCOLM intentionally and deliberately misstated and misquoted MASSON's words in

numerous ways, including but not limited to the following respects:

a. Defendant MALCOLM purports to quote MASSON as saying that, if he were to become head of the Freud Archives, a position which was to carry with it residence in Sigmund Freud's house in London, he would turn the house into a place of "sex, women, fun." In truth, MASSON never said such.

b. Defendant MALCOLM purports to quote MASSON as having said that his appointment as director of the Freud Archives would make it a "traumatic experience for American analysts to see a young guy like [MASSON] lounging around Anna Freud's house and running around with hundreds of Freud letters sticking out of his pockets." In truth, MASSON never said such.

c. Defendant MALCOLM portrays MASSON as admitting his own lack of honor by purporting to quote MASSON as having said that Dr. Eissler "had the wrong man" when Dr. Eissler asked MASSON to do the "honorable thing" by living "in silence" with his (MASSON's) firing from his position with the Sigmund Freud Archives. In truth, MASSON clearly only indicated to Defendant MALCOLM that he (MASSON) was not a man to keep silent about his termination.

d. Defendant MALCOLM purports to quote MASSON as having said that psychoanalysts "will crawl" to him once his book THE ASSAULT ON TRUTH was published, and that: "They will want me back, they will say that MASSON is a great scholar, a major analyst – after Freud, he's the greatest analyst who ever lived." In truth, MASSON never said such.

e. Defendant MALCOLM purports to quote MASSON as having said that analysts "sensed that I could single-handedly bring down the whole business and, let's face it, there's a lot of money in that business. And they were right to be frightened, because what I was discovering was dynamite." In truth, MASSON never said such.

f. Defendant MALCOLM purports to quote MASSON as having said that he changed his middle name to Moussaieff in 1975 because "it sounded better." In truth, MASSON never said such.

g. Defendant MALCOLM purports to quote MASSON as having said that there were "hundreds of articles on the positive effects of sexual seduction." In truth, MASSON never said such.

h. Defendant MALCOLM purports to quote MASSON as having told "The *Times*, *Time*, and *Newsweek*" the day after the meeting of the Board of the Sigmund Freud Archives during which MASSON was terminated that "Dr. Eissler forced me to promise him that I would not reveal anything that happened at the meeting [during which MASSON was terminated]. I'm sorry, gentlemen, that I have to go back on my word, but I will not be bound by such a promise." In truth, MASSON never said such. Instead, MASSON told Defendant MALCOLM that (a) he had told the members of the Board at said meeting that he would not be bound by any promise not to speak to the press and (b) that a member of the Board had defended MASSON's right to speak to the press.

i. Defendant MALCOLM purports to quote MASSON as having said that "analysis stands or falls with me now." In truth, MASSON never said such.

15. In falsely attributing the aforesaid quotations and statements to MASSON, Defendant MALCOLM acted intentionally and with reckless and deliberate disregard for whether or not such quotations and attributions were true and accurate.

16. In addition to the aforesaid deliberately false and/or out-of-context attributions and misquotations, Defendant MALCOLM deliberately omitted from her account statements made by MASSON, which omissions rendered the context in which MASSON spoke false and misleading. Said omissions included (without limitation) Defendant MALCOLM's false statement that "At no time during our acquaintance did MASSON answer my question about what had brought on his sudden virulent anti-Freudianism." Defendant MALCOLM omitted to state that MASSON had answered her question at length to explain the reasons for which his views about Freud had changed over time. Rather, Defendant MALCOLM attempted to portray MASSON as evasive and intellectually dishonest. On information and belief, Defendant MALCOLM acted intentionally and recklessly in making the aforesaid omissions.

17. As a proximate result of publication of such false and knowingly inaccurate misstatements and misquotations, and of such deliberate omissions, MASSON has been exposed to hatred, contempt, ridicule and obloquy by other members of the psychoanalytic and academic communities as well as the general public, all to his general damage in an amount not yet ascertained but in any event not less than $100,000. As a further proximate result of the aforesaid misquotations and omissions, MASSON has been injured in his occupation, all to his

special damage in an amount not yet ascertained but in any event not less than $100,000.

18. In making the aforesaid false and deliberately inaccurate misstatements and misquotations, and the aforesaid deliberate omissions, Defendant MALCOLM acted with knowledge of their falsity or with deliberate and reckless disregard of their truth or falsity, and MASSON is entitled to an award of punitive damages.

WHEREFORE, MASSON prays for judgment as more fully set forth below.

SECOND CAUSE OF ACTION

(Against Defendant THE NEW YORKER For Defamation)

19. MASSON incorporates by this reference as if fully restated herein, the allegations contained in paragraphs 1-18, above.

20. In republishing the false quotations and attributions contained in Defendant MALCOLM's articles, Defendant THE NEW YORKER published statements it knew to be false or published them with reckless and deliberate disregard of whether or not they were true or false.

21. As a proximate result of said false publications, MASSON has been exposed to hatred, contempt, ridicule and obloquy in the eyes of the psychoanalytic and academic communities and of the general public and he has been injured in his occupation, and has suffered general and special damages in an amount not yet ascertained but in any event not less than $100,000.

22. In making the aforesaid false publications, Defendant THE NEW YORKER acted knowingly or with deliberate and reckless disregard of the truth or falsity of said publications, and MASSON is entitled to an award of punitive damages.

WHEREFORE, MASSON prays for judgment as more fully set forth below.

THIRD CAUSE OF ACTION

(Against Defendant KNOPF For Defamation)

23. MASSON incorporates by this reference as if fully restated herein, the allegations contained in paragraphs 1-22, above.

24. In republishing the false quotations and attributions contained in Defendant MALCOLM's book IN THE FREUD ARCHIVES, Defendant KNOPF published statements it knew to be false or published them with reckless and deliberate disregard of whether or not they were true or false.

25. As a proximate result of said false publications, MASSON has been exposed to hatred, contempt, ridicule and obloquy in the eyes of the psychoanalytic and academic communities and of the general public and he has been injured in his occupation, and has suffered general and special damages in an amount not yet ascertained but in any event not less than $100,000.

26. In making the aforesaid false publications, Defendant KNOPF acted knowingly or with deliberate and reckless disregard of the truth or falsity of said

publications, and MASSON is entitled to an award of punitive damages.

WHEREFORE, MASSON prays for judgment as more fully set forth below.

FOURTH CAUSE OF ACTION

(Against All Defendants For Invasion of Privacy)

27. MASSON incorporates by this reference as if fully restated herein, the allegations contained in paragraphs 1 through 26, above.

28. Beginning with the publication of its December 5, 1983, issue, Defendant THE NEW YORKER, without MASSON's consent, invaded MASSON's right to privacy by publishing an article written by Defendant MALCOLM concerning MASSON containing detailed but distorted accounts of MASSON'S personal, family and home life, including descriptions of MASSON's ex-wife and his relation with her, MASSON's daughter and his relations with her, MASSON's girlfriend and his relations with her, and various persons with whom MASSON has been personally and/or professionally associated during his life. Said matters were republished by Defendant KNOPF in book form under the title IN THE FREUD ARCHIVES.

29. MASSON was not given an opportunity to learn of the matters contained in Defendant MALCOLM's article until after the first publication thereof in THE NEW YORKER, and was shocked and offended when public disclosure of the private details of his life and personal relations were revealed to the readership of THE NEW

YORKER. MASSON had been informed by Defendant MALCOLM and believed that the article she was preparing about him concerned his theories about psychoanalysis and his career as a psychoanalyst and was not intended to be an expose of his private life.

30. The purported facts disclosed about MASSON by Defendant MALCOLM in THE NEW YORKER and by Defendant KNOPF in MALCOLM's book IN THE FREUD ARCHIVES were private facts which MASSON desired to keep private and which he reasonably expected would be kept private.

31. The disclosure by Defendants of the aforesaid facts was offensive and objectionable to MASSON and to a person of ordinary sensibilities. No legitimate public concern is served by disclosure of the private details of MASSON's personal life, especially when those facts have little or no relation to the substance and merits of MASSON's theories concerning psychoanalysis, except insofar as they tend to disparage and discredit MASSON personally and thereby purport to impugn his scholarship through personal character assassination.

32. The aforesaid disclosures and deliberately false and out-of-context misquotations by Defendants created publicity in the sense of a public disclosure to the readership of Defendant THE NEW YORKER and of Defendant MALCOLM's book IN THE FREUD ARCHIVES published by Defendant KNOPF, which publicity placed MASSON in a false light in the public eye by incorrectly portraying MASSON as a person unsuited for academic or professional responsibility because he lacked personal and professional honesty, integrity and responsibility.

33. As a proximate result of the aforesaid disclosure of private facts, and of the aforesaid "false light" publicity, MASSON has been exposed to hatred, contempt, ridicule and obloquy, has suffered loss of reputation and standing in the community at large and in the psychoanalytic and academic communities in particular, all of which has caused him, his family and his friends humiliation, embarrassment, mental anguish and suffering, all to his general damage in an amount not yet ascertained but in any event not less than $100,000.

34. As a further proximate result of the aforesaid public disclosure of private facts, and of the aforesaid "false light" publicity, MASSON has been injured in his trade and business, in that he has been impaired in his professional career and has lost earnings and opportunities for employment, all to his special damage in an amount not yet ascertained but in any event not less than $100,000.

35. In making the aforesaid disclosures of private facts, and creating the aforesaid "false light" publicity, Defendants and each of them were guilty of oppression, fraud and malice, in that Defendants acted with a conscious disregard of MASSON's rights and with the intent to exploit private details of MASSON's personal life in order to sensationalize the circumstances in which Plaintiff developed his theories concerning psychoanalysis. MASSON is therefore entitled to an award of punitive damages in an amount not less than ten million dollars ($10,000,000).

WHEREFORE, MASSON prays for judgment as follows:

1. For general damages in an amount not yet ascertained but in any event not less than $100,000.

2. For special damages in an amount not yet ascertained but in any event not less than $100,000.

3. For punitive damages in an amount not less than ten million dollars ($10,000,000).

4. For costs of suit herein, including a reasonable attorneys' fee.

5. For such other and further relief as the Court deems proper and just.

JURY DEMAND

Plaintiff MASSON demands trial by jury on all causes of action in this Complaint.

Respectfully submitted,

CARROLL, WELLER & HAINES

DATED: November 29, 1984

By:/s/ Michael Brooks Carroll
Michael Brooks Carroll
Jonathan H. Krotinger
Attorneys for Plaintiff
JEFFREY M. MASSON

MALCOLM Deposition at 313-4-23

• • •

A "As I came to realize, it was not the right question – as is probably the case with all unanswerable questions," and then let's put three dots there, and the quote continues: "If Masson is silent about – and possibly ignorant of – the motive for a psychoanalytic volte face. He was anything but reticent – this is not to my point anymore." You can end the quote there, after the three dots.

I am talking about my understanding of Mr. Masson's positions, not anything more literal than that. That is what I am trying to say with my answer.

Q When you say to the readers, "As I came to realize, it was not the right question." That is the end of the part that I am quoting. Were you not telling the readers that is the question you asked, but as maybe time went on, maybe that was not the right question to ask?

A Yes, but not that – I am not talking as literally perhaps as your question makes it seem. I think the sense of this is that there are many times when we talked about this I was trying to find out what had happened and I was – I never received a satisfactory answer.

• • •

MASSON Deposition at 326-15-335-5

• • •

MR. KENADY: Q. All right. You have retained or employed Mr. Brosnahan, who sued the Freud Archives; correct?

A. Correct.

Q. And I understand he's on your good list of lawyers like Mr. Morgan? He communicates with you?

MR. MORGAN: I don't know where there is a bad list. I don't know where you get the good list or a bad list.

MR. KENADY: Q. At any rate, he is on the approved list?

A. I was satisfied.

Q. You were satisfied. And he communicated with you, did he?

A. Yes, he did.

Q. Okay. Did he let you see the complaint that he filed on your behalf?

A. Yes.

Q. And did he let you see it before or after you filed and served it?

A. Before.

Q. Before?

A. Yes.

Q. Did he ask you to read it?

A. Yes.

Q. And did you?

A. Yes.

Q. And you understand what the complaint meant in terms of a necessity of truth and accuracy?

A. Yes. But –

Q. What did you understand?

MR. MORGAN: What do you mean, what did you understand? I don't –

MR. KENADY: Q. What did he understand that the complaint was supposed to represent in terms of truth and accuracy?

A. Well, that it should be true and accurate, of course, to the best of my recollection. We didn't entirely agree on every point in it and he asked me to defer to his greater legal knowledge in a number of issues, which I did.

Q. I see.

A. And if you want an instance –

MR. MORGAN: No, let him answer the question.

MR. KENADY: Q. Well, as a result of the disagreement, did anything get into the complaint that, in your mind, was not the truth?

A. Well, not the truth, but something that I did not feel as strongly about as he did about. It was true but it was –

MR. MORGAN: You've answered.

MR. KENADY: Q. What do you mean by you didn't feel as strongly as he did about something. What do you have in mind?

MR. MORGAN: Go ahead. Tell him.

THE WITNESS: Well, just that when he added libel – because Dr. Eissler had written and was quoted in the New York Times as saying, "Would you makd [sic] a man director of the Freud Archives who writes plain nonsense?" I did not like that, but I felt that was his opinion. He was not quoting me and he was entitled to his opinion.

And Jim said, "No, because doesn't it damage you?" And I said, "Well, it does, but" – and so, we argued a little bit about that, and he wanted to retain it and that's where he asked me to defer to his legal experience on the matter. But there was nothing untrue about it.

MR. KENADY: Q. Well, were your allegations of damage contained in the complaint, true and accurate with the possible possible exception of this libel complaint?

A. Yes. I mean, the amount is not something –

MR. MORGAN: Wait, wait. Ask the question.

MR. KENADY: Q. Do you recall how much you claimed in damages?

A. I don't actually know.

Q. Do you have a copy of your complaint available here?

MR. MORGAN: No, we didn't bring that.

MR. KENADY: Q. Well, I'll show you this document and represent to you that I'm told that it's a true

copy of the complaint that was filed on your behalf by Mr. Brosnahan.

Take your time and look it over and then I'll have a couple of questions to ask you.

A. Okay. Well, you can just ask me.

Q. All right. Sure.

Well, let's see. For the first cause of action, the wrongful discharge, you stated that you had suffered loss of wages and benefits and a sum in excess of two million dollars; correct?

A. Uh-huh.

Q. Looking at Paragraph 22?

A. Uh-huh.

Q. And that you had, likewise, suffered irreputable and permanent injury as a result of the wrongful discharge in being deprived of a unique position and Freud scholarship and have been denied access to the Freud collection?

A. Uh-huh.

Q. All right. Do those damages continue to this day?

A. Yes.

Q. And the next cause of action again is for breach of implied covenant requiring dismissal only upon good cause. In Paragraph 37, it's set forth that you suffered the loss of wages and benefits in the sum in excess of two million dollars?

A. That's correct.

Q. And then it goes on and in Lines 16 through 21 of Page 14 of your complaint and states that plaintiff has suffered and will continue to suffer the loss of academic research grants. Was that true?

A. Yes.

Q. As a result of the discharge?

A. Yes.

Q. And does that continue to this day?

A. Yes.

Q. All right.

The third cause of action, breach of implied covenant of good faith and fair dealing. That repeats the allegations about lifetime employment and mentions again the lifetime residence in the Freud house, and again mentions the damages in excess of two million dollars?

Is that true?

A. That's true.

Q. And is that continued to this day?

A. Yes.

Q. Fourth cause of action, breached duty of good faith and fair dealing.

It was stated that you were discharged without good cause and again suffered loss of wages and benefits, including the loss of residence, the loss of academic research grants in the amount of two million dollars. Was that true?

A. Yes.

Q. And then it says at Paragraph 47, Page 17, Line 10 through 12 that as a further result of the wrongful acts, plaintiff has been unable to find satisfactory employment of a similar kind by which to support himself and his family.

A. Correct.

Q. All right. Was that true?

A. Yes.

Q. And for how long has that continued?

A. Since.

Q. Since then?

A. Yes.

Q. All right. Now, you assert in Page 18 in Lines 12 through 16, that had plaintiff been aware of the falsity of defendant's representations, he would not have entered into an employment agreement with Defendant Freud Archives and he would not have resigned his tenured full Professorship at the University of Toronto. Now, is that true?

A. Yes.

Q. Is it true that Dr. Eissler urged you not to resign your tenured professorship?

A. That's correct.

Q. So, at least as far as he was concerned, he did not make a false representation which led you to resign your professorship?

A. Well, the reason he told me not to resign it was not because he thought I would ever be fired from the Archives, but he felt that an academic position was a prestigious and valuable thing to attain and there was no reason I couldn't do both.

Certainly it never occurred to me, or he never gave me any hint that this could only last for a year. He represented it to be a lifetime position.

Q. Sixth cause of action, commencing at the complaint page 19, Paragraph 55, you assert there that prior to your termination as projects director, you entered into agreements and had accepted invitations from Psycho Analytic Societies to make presentations. Would that yield money to you?

A. Yes.

Q. And then you list the organizations and then you charge that following your termination, each of those organizations had breached the agreement with you and had canceled your presentations?

A. That's correct.

Q. Is that true? All right. What amount of money was involved there?

A. Small amounts.

Q. I see. Nothing like two million dollars?

A. No.

Q. Then in the seventh cause of action, conspiracy to interfere with contractual relationship, Page 21, Line 24

through Line 6 on Page 22. Would you simply read that over to yourself and then tell me whether that was true?

A. That's true.

Q. And is it also true, as set forth in your complaint on Page 22, Line 12 as a proximate and direct result of the conspiracy that you've charged, plaintiff had become a pariah?

A. Yes, that's correct. I see where you're going.

Q. All right. In the psychoanalytic community?

A. That's correct.

Q. All right. And does that still continue?

A. Yes, it does.

Q. And plaintiff has suffered loss of employment opportunity?

A. That's correct.

Q. And then it continues on Page 22 at Line 24 through Line 26. Plaintiff has suffered a loss of professional reputation and prestige and has lost employment opportunities. Is that true?

A. That's correct.

Q. And does that continue to the present day?

A. Yes.

Q. And this was caused by the discharge from the Freud Archive and the conspiracy between Eissler and other unknown members?

A. That's correct.

MR. MORGAN: Well, are you asking him that that's the only cause of the problem today?

MR. KENADY: No, I don't think I said that's the only problem. I'm asking him whether the damages he's charging here still continue to this day and I did –

THE WITNESS: They do. They've been added to, but they continue.

MR. KENADY: Q. Then the eighth cause of action, Page 23, intentional infliction of emotional distress, and you state at Line 25, as a direct and proximate result of the aforementioned acts. We can understand in your discharge, you suffer humiliation, loss of professional standing and prestige, mental anguish and emotional and physical distress. Was that true?

A. That's correct.

Q. Did you seek any medical assistance?

A. No.

MR. MORGAN: The answer is no.

THE WITNESS: No.

MR. KENADY: Q. Did you take any medicines for the emotional distress?

A. No, I don't believe in that.

Q. Okay. I think you've told us that you haven't taken any medicines or sought any professional counseling for any emotional distress that's arisen from the publication in suit here?

A. That's correct.

Q. Now, the fifth cause of action for libel, you said you have some difference of opinion on?

A. That's correct.

Q. But your counsel said it should be in and you deferred to his professional judgment?

A. That's correct, exactly.

Q. In any event, it was known to all that you had sued Dr. Eissler for libel?

MR. MORGAN: I'm going to object. Well, if you know –

MR. KENADY: Q. Known to those who knew of the lawsuit.

A. I was not aware actually, because when Malcolm told me that I did, I denied it and it wasn't until she drew my attention to that that I realized I had. I did not know I had sued him for libel, no.

But I did, obviously.

* * *

Shawn Deposition at 19:5-19

* * *

Let's say it is an outside writer who writes a piece for us. I would be much more – and some outside writers do write pieces for us – I would be much more worried about all of these things that we are now discussing than I would be with somebody who has been here for twenty years, thirty years or ten years and who was taken onto

the staff in the first place because I had judged that person to be a person of character and a profoundly responsible person.

Therefore, I would not even question whether any of our writers had quoted somebody accurately or had in any way twisted something or distorted something, because I know them and I know they would not do it or they wouldn't be here.

* * *

Shawn Deposition at 24:8-25

* * *

I might say, I have been responsible for the journalistic writing in the magazine now for forty-seven years; thirteen years as managing editor in charge of the journalistic writing, thirty-four years as the editor-in-chief.

I cannot remember ever getting a complaint in forty-seven years – I cannot remember a single complaint that we have misquoted somebody unless it is Mr. Masson who now claims that we have misquoted him, but in – prior to that I don't know of a single complaint of misquotation which is astonishing.

I then asked – I asked the head of our Checking Department, the present head of our Checking Department whether he remembered such a complaint; no.

I asked a former head of the Checking Department whether she remembered any complaint on misquotation, and the answer was no.

* * *

Malcolm Deposition at 55:17-56:24

* * *

Q Since the early eighties, what was your function with *The New Yorker Magazine*?

A Writing long articles and a few book reviews. I can only now think of one book review now. Let's say long articles and a book review.

Q From 1980 up until 1983, who was your immediate superior at *The New Yorker*?

A Mr. Shawn.

Q What is his position?

A He is the editor.

Q Would you report directly to him?

A Well, "report" is kind of an odd word.

Q How would it be determined as to what articles you would write for *The New Yorker Magazine* in the eighties?

A I would speak to Mr. Shawn about them and he would either say, "Yes, that's fine, go ahead," or he would say he didn't think that was a good idea.

Q We were talking about during the 1980's. You would go to Mr. Shawn and you would suggest a particular article you wanted to write on; is that correct?

A Correct.

Q In the 1980's, how many staff writers were there for *The New Yorker Magazine*?

A I have no idea.

Q Are we talking about more than ten?

A Yes.

Q Did other staff writers operate in the same manner as you, in that they would go to the editor and say, "I would like to write on a particular article"?

A As far as I know, they did.

* * *

Malcolm Deposition at 64:19-65:8

* * *

Q As a staff writer for *The New Yorker Magazine*, are you required to write at least one article a year?

A No.

Q The determination is solely yours, whether you do or do not write?

A Correct.

Q Is there any distinction as far as *The New Yorker Magazine* is concerned between being a staff writer or a free-lance writer?

A No – I don't know what it is.

Q Are you required to spend any amount of time per year on working on articles for *The New Yorker Magazine* in order to be a staff writer?

A No.

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